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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 477

ATLANTIC COAST LINE R. Co.,

Petitioner,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 11, 1969
CERTIORARI GRANTED NOVEMBER 10, 1969

Supreme Court of the United States

OCTOBER TERM, 1969

No. 477

ATLANTIC COAST LINE RAILROAD COMPANY,

Petitioner,

v.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS; J. E. EASON, individually and as an official of
said Brotherhood; J. D. SIMS, individually and as an
official of said Brotherhood; H. M. SAWYER, individually
and as a member of said Brotherhood; W. K. MORRIS,
individually and as a member of said Brotherhood; and
G. W. RUTLAND, individually and as a member of said
Brotherhood,

Respondents.

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Docket Entries

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA—JACKSONVILLE DIVISION
No. 67-335—Civ.—J.

ATLANTIC COAST LINE R. Co.,

Plaintiff,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.

DATE

PROCEEDINGS

1967

April 25 Complaint filed.

" 25 Summons issued as to Brotherhood c/o J. E. Eason (Orig. & 1 to Marshal).

" 25 Summons issued as to Brotherhood c/o J. D. Sims (Orig. & 1 to Marshal).

" 25 Summons issued as to Local Lodge Div. 823 c/o J. E. Eason (Orig. & 1 copy to Marshal).

" 25 Summons issued as to Local Lodge Div. 823 c/o J. D. Sims (Orig. & 1 copy to Marshal).

" 25 Summons issued as to J. D. Eason individually (Orig. & 1 to Marshal).

" 25 Summons issued as to J. D. Sims individually (Orig. & 1 to Marshal).

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- April 25 Summons issued as to H. M. Sawyer individually (Orig. & 1 to Marshal).
- " 25 Summons issued as to W. K. Morris individually (Orig. & 1 to Marshal).
- " 25 Summons issued as to G. O. Rutland individually (Orig. & 1 copy to Marshal).
- " 25 Hearing in Open Court on petition for a temporary restraining Order and for a preliminary injunction to be made permanent upon a final hearing. WAM.
- " 25 Plaintiffs Exhibits Nos. 1 through 37, Filed in Evidence (Enclosed in Vol. III).
- " 25 Memorandum in support of Complaint filed by Plaintiff.
- " 25 Taken under advisement by the Court.
- " 25 Defendants Exhibit A, Filed in Evidence (Enclosed in Vol. III).
- " 26 Order denying application for temporary injunctive relief. R-43 WAM.
- June 12 Summons returned unexecuted as to Local Lodge Div. 823 etc. 6-9-67.
- " 12 Summons returned unexecuted as to Brotherhood of Locomotive Engineers 6-9-67 at request of atty.
- " 12 Summons returned unexecuted as to Brotherhood of Locomotive Engineers 6-9-67 at request of atty.

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June 12 Summons returned unexecuted as to Local Lodge Div. 823 of the Brotherhood of Locomotive Engineers 6-9-67 at request of Atty.

" 12 Summons returned unexecuted as to G. O. Rutland etc. 6-9-67.

" 12 Summons returned unexecuted as to W. K. Morris etc. 6-9-67.

" 12 Summons returned unexecuted as to H. M. Sawyer etc. 6-9-67.

" 12 Summons returned unexecuted as to J. D. Sims etc. 6-9-67.

" 12 Summons returned unexecuted as to J. E. Eason etc. 6-9-67.

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May 23 Answer of Deft. Brotherhood of Locomotive Engineers and J. D. Sims.

" 23 Motion to consolidate with Case No. 69-351—Civ.—J.

" 27 Answer of Defts. Brotherhood of Locomotive Engineers and J. D. Sims.

" 27 Notice of hearing by special appointment 5-28-69 10 A.M. WAM.

" 27 Notice of hearing by special appointment 5-28-69/10 A.M.

" 27 Memo in support of motion to dissolve order for temporary injunction.

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- June 4 Motion for preliminary injunction.
- " 4 Memo in support of motion for preliminary injunction.
- " 6 Notice of voluntary dismissal and motion for voluntary dismissal.
- " 6 Memo in support of notice of and motion for voluntary dismissal.
- " 6 Memo in opposition to motion for preliminary injunction.
- " 6 Affidavit of Allan Milledge, Esq. Atty. for Defts. filed with exhibits. (See Volume II.)
- " 6 Hearing in Open Court on Motion for voluntary dismissal by Plaintiff and on (WAM) Motion for Preliminary Injunction by Defendants.
- " 6 Taken under advisement by the Court.
- " 20 Order denying pltf's motion for voluntary dismissal etc. R-52 WAM.
- " 23 Motion by pltf. to dissolve Injunctive Order dated 6-19-69, subsequent to final hearing.
- " 23 Application for entry of permanent injunction by pltf.
- " 23 Request to set for final hearing and motion for expedited final hearing by pltf.
- " 23 Order setting for hearing 11 A.M. 6-25-69. R-52 CBS.

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- June 24 Transcript of proceedings 6-6-69 at 10:30 A.M.
before Hon. Wm. A. McRae, Jr.
- " 24 Affidavit of Frank X. Friedmann (see Volume
II).
- " 25 Hearing in Open Court on pending motions.
- " 25 Court declines to rule on pending motions at
this time.
- " 25 Motion by Plaintiff to Stay Injunction Order
dated June 19, 1969.
- " 25 Motion by Plaintiff to Stay Injunction Order
dated June 19, 1969—Denied.
- " 25 Motion by Plaintiff to Suspend Injunction
pending appeal, Filed in Open Court.
- " 25 Motion by Plaintiff to Suspend Injunction
pending appeal—Denied.
- " 25 Court allows Attorneys to hand deliver record
on Appeal to Court of Appeals CRS.
- " 25 Notice of appeal filed.
- " 25 Bond on appeal secured by cash deposit filed.
- " 25 Request to clerk to certify and transmit par-
tial record.
- " 25 Order deferring ruling upon Pltff's motions etc.;
denying Pltff's motion to stay injunction order
dated 6-19-69; denying Pltff's motion to suspend
injunction pending appeal and amending Pltff's
request to Clerk to certify and transmit partial
record etc. R-52 CRS.

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- June 25 Proposed Order No. 1.
" 25 Proposed Order No. 2.
" 25 Proposed Order No. 3.
" 26 Transcript of Proceedings before the Honorable Charles R. Scott, commencing at 12:00 o'clock noon, Wednesday, June 25, 1969.

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA,
JACKSONVILLE DIVISION
No. 67-335—Civ.—J.

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Plaintiff,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS; J. E. EASON, individually and as an official of
said Brotherhood; J. D. SIMS, individually and as an
official of said Brotherhood; H. M. SAWYER, individually
and as a member of said Brotherhood; W. K. MORRIS,
individually and as a member of said Brotherhood, and
G. Q. RUTLAND, individually and as a member of said
Brotherhood,

Defendants.

Complaint
(Filed April 25, 1967)

The Atlantic Coast Line Railroad Company, a corpora-
tion (hereinafter "ACL"), sues the Brotherhood of Loco-
motive Engineers, an unincorporated labor association
(hereinafter "BLE"), individually and as a representa-
tive of its membership; Local Lodge Division 823 of the
BLE for the Florida East Coast Railway Company, a
corporation (hereinafter "FEC"); J. D. Sims, individually
and as Assistant Grand Chief Engineer of the BLE; J. E.

Eason, individually and as Local Chairman of the BLE for the FEC; and H. M. Sawyer, W. K. Morris and G. Q. Rutland, individually and as members, agents and representatives of the Local Lodge of the BLE for the FEC, as defendants, and alleges:

COUNT I

1. The Court has jurisdiction of this suit because this is an action arising under the Constitution and Laws of the United States, and the amount in controversy exceeds the sum of \$10,000.00, exclusive of interest and costs. The jurisdiction of this Court is specifically invoked under Sections 1331 and 1337 of the Judicial Code (28 U.S.C., §§ 1331 and 1337), the Railway Labor Act (45 U.S.C., § 151, et seq.), the Interstate Commerce Act (49 U.S.C., § 1, et seq.) and Rules 17(b), 23.2 and 65, Federal Rules of Civil Procedure.

2. Plaintiff, ACL, is a corporation organized under the laws of the State of Virginia and is authorized to do business in the State of Florida. Plaintiff is a carrier under the Interstate Commerce Act (49 U.S.C., § 1, et seq.), is operating in more than one state and is subject to the Railway Labor Act (49 U.S.C., § 151, et seq.). Plaintiff as a common carrier, serves numerous communities within and without the State of Florida to which it provides extensive freight, passenger, mail and express service. Plaintiff serves numerous industries and plants not only with mail service but also with freight service and provides for such industries and plants supplies and materials vital for their existence. Further, plaintiff serves various instrumentalities of the Federal Government, including freight service of vital military equipment. Plaintiff is obligated under the Interstate Commerce Act to provide passenger service to

various individuals, mail service to the public at large, freight service to individual shippers and to communities at large and interchange service to numerous connecting railroad common carriers.

3. Defendant BLE is an unincorporated labor organization with its principal offices in Cleveland, Ohio, but with local lodges located in the Middle District of Florida. Defendant J. D. Sims currently and at all times material hereto has held the national office in the BLE designated as Assistant Grand Chief Engineer whereby he was and is charged with the responsibility of promoting, inducing and coordinating the acts hereinafter alleged. Defendant Sims, individually and in his official capacity as said national officer, did in fact promote, induce, and coordinate the acts hereinafter alleged. Defendant J. E. Eason is a resident of the Middle District of Florida and is the local chairman for BLE members employed by FEC in the State of Florida and individually and in said official capacity as local chairman has also promoted, induced and coordinated the acts hereinafter alleged and assisted the BLE and defendant Sims in promoting, inducing and coordinating such actions. Defendants H. M. Sawyer, W. K. Morris and G. Q. Rutland, as members, representatives and agents of BLE and Local Lodge Division 823 of the BLE, have picketed, displayed pamphlets and induced plaintiff's employees to cease work as hereinafter alleged. The other individual members of the BLE are so numerous as to make it impractical to bring them all before the Court individually.

4. ACL has various lines coming into and going out of the City of Jacksonville, Duval County, Florida, including main lines to Richmond, Virginia and Birmingham and Montgomery, Alabama, through which service is provided to various destinations north and west of said County and

including main lines destined to Tampa, Florida, serving points between Tampa and said County. The property and lines of FEC end at a point just to the north of the St. Johns River and to the south of the Jacksonville Terminal Company, the northeast Florida terminal facility for various user railroads. The rail lines of ACL in Duval County in no way adjoin or are directly connected to the rail lines or property of FEC. ACL does not own any part of the stock of ACL and does not in any way control the operation or management of ACL. FEC does not own any part of the stock of ACL and does not in any way control the operation or management of ACL. ACL operations are in no way integrated into the operations of the FEC and ACL furnishes to FEC no switching or other interchange service to FEC other than simple transfer of property rights in and responsibility for railroad cars from ACL to FEC and from FEC to ACL as hereinafter described. ACL furnishes no minor repairs or maintenance on FEC cars or locomotives. ACL provides no signaling or switching service for FEC in Moncrief Yard, Duval County, or elsewhere. ACL furnishes to FEC no goods, facilities, or services which are an integral part of the day-to-day operations of FEC.

5. FEC is a corporation organized under the law of the State of Florida and is a common carrier shipping various goods and commodities into interstate commerce and receiving various goods and commodities from various interstate railroads, including ACL. On September 25, 1963, FEC served notices under Section 6 of the Railway Labor Act (45 U.S.C., Section 156) demanding changes in rules, rates of pay and working conditions of its non-operating employees. This action eventually resulted in a strike by non-operating employees of FEC on January 23, 1963. The

property of the FEC has been picketed by a striking labor organization since that date advertising the union—FEC labor disputes. On March 12, 1967, at or about 12:01 a.m., FEC unilaterally made effective changes in rules, rates of pay and working conditions applicable to members of the BLE. The changes were made following service of a Section 6 Notice, dated November 30, 1964. Failure of parties to reach an agreement resulted in unsuccessful mediation with arbitration being rejected by FEC.

6. On Sunday, the 23rd day of April, 1967, without notice, the BLE, by and through its members, including defendants Sims and Eason, proceeded to distribute and to display letter-type pamphlets and to display picket signs at employee entrances to the property and interchange yard exclusively owned by ACL in Duval County, Florida, and known as Moncrief Yard. A sample of said letter-type pamphlets is attached hereto as Exhibit "A". The express and manifest intent of the BLE in distributing the pamphlets and carrying and displaying said picket signs was to induce the employees of ACL in Moncrief Yard to refuse to handle, move or carry out their regularly assigned duties with regard to any ACL railroad car which had arrived in Moncrief Yard from the FEC or which had arrived in Moncrief Yard destined to the FEC. Members of the BLE, who were not and are not employees of the ACL, patrolled and picketed at the aforesaid employee entrances for the purpose of distributing and displaying the pamphlets and displaying said signs and to induce and coerce both the ACL and its employees to cease handling said ACL cars which had arrived from or were destined to the FEC and thus to embargo FEC.

Railroad cars brought into the ACL Moncrief Yard by ACL crews which are ultimately destined for FEC remain the sole property and responsibility of ACL until such time

as they are placed on designated interchange tracks and necessary transfer documents are prepared and made available for acceptance by FEC. Railroad cars brought into Moncrief Yard from FEC and ultimately destined for ACL are brought by FEC crews which deposit them upon designated interchange tracks owned and controlled by ACL. Immediately upon deposit of said cars by FEC on ACL property and transfer or delivery of necessary documents to ACL, said cars become the sole property and responsibility of ACL. The sole purpose and results of the actual aforesaid distribution of pamphlets and patrolling by defendants is to induce employees of ACL to refuse to handle, move or otherwise carry out their regularly assigned duties in regard to said cars (1) prior to interchange and transfer to FEC on southbound traffic and subsequent to interchange and transfer from FEC on northbound traffic; (2) while the sole property and possessory rights to said cars are vested in ACL, without any property or possessory right then existing in FEC; and (3) while said cars are located solely on ACL property. The intent and purpose of this patrolling and the distribution of pamphlets was not lawfully to advertise or advise either the public or ACL employees of the BLE labor dispute with FEC.

7. As a direct result of the inducement and coercion by the BLE through the distribution of the aforesaid pamphlets and the aforesaid patrolling, the employees of ACL in Moncrief Yard have failed and refused to comply with the terms, written and implied, of the various labor agreements entered into between ACL and its employees represented by their respective Brotherhoods including defendant BLE. The aforesaid refusal by ACL employees to handle any ACL railroad car which has arrived from or is ultimately destined to FEC has resulted in the following:

(a) Total disruption of the interchange operations of ACL in Moncrief Yard which are necessary for continued operation of plaintiff's business;

(b) Effective blockade of railroad cars destined to points within the County of Duval and throughout the State of Florida and the United States;

(c) Stoppage of cars carrying citrus and other perishable goods, United States mail, military traffic, express lading, and other strategic materials;

(d) Inability to serve properly shippers within and without the County of Duval due to the necessity of using supervisory personnel from other points on ACL to operate Moncrief Yard and due to interference with traffic patterns and schedules;

(e) Complete disruption of interchange of freight between ACL and other connecting railroad common carriers, including Jacksonville Terminal Company, Seaboard Air Line Railroad Company, Southern Railway System and FEC.

(f) Substantial loss of profits by diversion of traffic and loss of traffic to other railroads by shippers within and without the County of Duval to a degree which cannot now be determined but which will be determinable in the future, and which threatens job standards and job security of ACL employees.

8. The BLE through the aforesaid distribution of pamphlets and patrolling seeks to induce and has induced the employees of the ACL to violate the intent and purpose of the Railway Labor Act as expressed in Section 2(1) and (5) (45 U.S.C., Section 151a (1) and (5)) and in direct violation of Section 3(i) of the Railway Labor Act (45

U.S.C., Section 153(i)). The aforesaid failure and refusal of ACL employees to handle, move or otherwise carry out their regularly assigned duties with regard to ACL cars located on ACL property in Moncrief Yard as aforesaid is in violation of their agreement to perform services which is implied from said employees' relationship with the ACL and from the applicable labor agreements between ACL and its employees represented by their respective Brotherhoods, including defendant BLE. The interpretation of the rules and working conditions required of ACL employees under the aforesaid agreements are in dispute as the result of the refusal of the aforesaid ACL employees to work, and, thus, a "minor dispute" subject to the jurisdiction of the National Railroad Adjustment Board has been thereby created and now exists. (45 U.S.C. 153). BLE and defendants Sims and Eason have conspired to induce and coerce and have induced and coerced the employees of ACL to cease work as aforesaid in violation of said existing labor agreements without exhausting the administrative procedures required by that Act for the settlement of a minor dispute.

9. The combination of defendants and the conspiracy of defendants to induce ACL employees to refuse to handle, move, or otherwise carry out their regularly assigned duties with regard to ACL cars ultimately destined to or previously received from FEC and the actual inducement and coercion of said employees to so refuse said service is in violation of Section 10 of the Interstate Commerce Act (49 U.S.C., Section 1). The actions of defendants to induce both the employees of ACL and ACL to refuse service to ACL cars having previously arrived from or ultimately destined to FEC and to embargo the FEC seek to force ACL and its employees to violate and is in violation of

Section 1(4), 1(11), 3(4), 1(15) and 1(17) of the Interstate Commerce Act, 49 U.S.C.

10. The aforesaid unlawful work stoppage by ACL employees and the present and continued interruption of plaintiff's business as the result of the acts of defendants, unless restrained or enjoined by this Court, will interfere, hinder, delay and prevent the movement of passenger, mail, freight and express lading, including products of industry and food and other freight essential to the public health and safety and essential to military defense. If said unlawful acts continue, they will obstruct, hinder and delay the interstate commerce over plaintiff's railroad and those of connecting carriers. Such unlawful acts, if allowed to continue, will cause irreparable damage to plaintiff in the particulars described above in paragraph 7, and also create irreparable damage to the United States Government and countless businesses, industries, individuals and other operating railroads.

11. Plaintiff is without an adequate remedy at law and will suffer the aforesaid irreparable harm unless the unlawful acts of defendants are restrained and enjoined. Plaintiff is informed and believes that the aforementioned illegal actions of defendants will be continued unless the relief prayed for is granted. Far greater injury will be inflicted upon plaintiff by denial of the relief sought than can result to defendants from the granting of said relief. Plaintiff will do equity in this cause and will negotiate with defendants or otherwise comply with all requirements of the Railway Labor Act and all other pertinent laws.

WHEREFORE, plaintiff prays that this Court issue a temporary restraining order forthwith and without notice, and a preliminary injunction to be made permanent on final

hearing, enjoining and restraining the above captioned defendant labor organization and the individual defendants, individually and as representatives, agents, officers, servants of the members of the class and craft represented by said labor organization, jointly and severally, and all other persons acting at the direction of or in active concert or participation with them, and all persons receiving notice of any such orders of the Court from:

1. Impeding, obstructing, tampering, or interfering with the business and operations of plaintiff conducted and carried out by plaintiff on property under the ownership or control of plaintiff in Duval County, Florida, including without limitation that property known as Moncrief Yard.

2. Directing, ordering, inducing, causing, coercing, authorizing, recommending, sanctioning, calling, continuing, encouraging, assisting or participating in any strike, slowdown, stoppage of work, or other collective or concerted action designed to interrupt, retard or in any way impair the operation of plaintiff's business as conducted by plaintiff on property owned or controlled by plaintiff in Duval County, Florida, including without limitation that property known as Moncrief Yard.

3. Ordering, causing, authorizing, inducing, or attempting to induce, any employee of plaintiff to refuse to perform such employee's regularly assigned duties including without limitation those in regard to car service, switching, handling, unloading, moving, or other activities relating to or involving cars, rolling stock, engines, cuts, or trains of cars or any contents thereof located on property owned or controlled by plaintiff in Duval County, including without limitation that property known as Moncrief Yard.

4. Interfering with employees of plaintiff in the performance of their respective duties of their employment by fines or otherwise, or paying any benefit and giving any money or anything of value to any employee of plaintiff who refuses a lawful order to perform services for plaintiff in accordance with any collective bargaining agreement covering said services in, on or about plaintiff's facilities or supporting in any way any employee of plaintiff who refuses to obey a lawful order or request to perform such services.

5. Inducing or attempting to induce, individually or collectively, any other employee or class or group of employees of the plaintiff to perform any of the foregoing acts.

6. Directing, authorizing, ordering, sanctioning, or participating in patrolling, picketing, or blockading of any entrances or exits of any kind or description used by employees of plaintiff in connection with their work on property owned and controlled by plaintiff in Duval County, Florida.

Plaintiff further prays:

7. That the defendant labor organization, its appropriate officers, agents, servants and employees and the other defendants herein be directed and mandatorily enjoined to withdraw and countermand any order, directive, recommendation, request or other advice, heretofore issued by any of defendants' officers, agents, attorneys, or members, asking any of plaintiff's employees not to render service in connection with the operation of the plaintiff.

8. That plaintiff be granted such other and further relief as the case may require and as the Court shall deem proper.

COUNT II

1. Plaintiff realleges all of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11 of Count I herein.

12. The BLE and the defendants Sims and Eason have induced and coerced the employees of ACL to unilaterally attempt to force a change in rules and working conditions by ceasing to perform the regularly assigned duties of their employment in violation of Section 2(1) and (4) and Section 6 of the Railway Labor Act (45 U.S.C., Section 151(1) and (4) and 156). The patrolling, inducing, distributing of the aforesaid pamphlets and instructing by said pamphlets by defendants was designed to and did result in a cessation of work by ACL employees as a result of a "major dispute" as to the rules and working conditions of said employees without prior exhaustion of requisite administrative procedures as set forth in aforesaid provisions of the Railway Labor Act.

WHEREFORE, plaintiff prays that this Court issue a temporary restraining order forthwith and without notice, and a preliminary injunction to be made permanent on final hearing, enjoining and restraining the above captioned defendant labor organization and the individual defendants, individually and as representatives, agents, officers, servants of the members of the class and craft represented by said labor organization, jointly and severally, and all other persons acting at the direction of or in active concert or participation with them, and all persons receiving notice of any such orders of the Court from:

1. Impeding, obstructing, tampering, or interfering with the business and operations of plaintiff conducted and carried out by plaintiff on property under the ownership or

control of plaintiff in Duval County, Florida, including without limitation that property known as Moncrief Yard.

2. Directing, ordering, inducing, causing, coercing, authorizing, recommending, sanctioning, calling, continuing, encouraging, assisting or participating in any strike, slow-down, stoppage of work or other collective or concerted action designed to interrupt, retard or in any way impair the operation of plaintiff's business as conducted by plaintiff on property owned or controlled by plaintiff in Duval County, Florida, including without limitation that property known as Moncrief Yard.

3. Ordering, causing, authorizing, inducing, or attempting to induce, any employee of plaintiff to refuse to perform such employee's regularly assigned duties, including without limitation those in regard to car service, switching, handling, unloading, moving, or other activities relating to or involving cars, rolling stock, engines, cuts, or trains of cars or any contents thereof located on property owned or controlled by plaintiff in Duval County, including without limitation that property known as Moncrief Yard.

4. Interfering with employees of plaintiff in the performance of their respective duties of their employment by fines or otherwise, or paying any benefit and giving any money or anything of value to any employee of plaintiff who refuses a lawful order to perform services for plaintiff in accordance with any collective bargaining agreement covering said services in, on or about plaintiff's facilities or supporting in any way any employee of plaintiff who refuses to obey a lawful order or request to perform such services.

5. Inducing or attempting to induce, individually or collectively, any other employee or class or group of employees of the plaintiff to perform any of the foregoing acts.

6. Directing, authorizing, ordering, sanctioning, or participating in patrolling, picketing, or blockading of any entrances or exits of any kind or description used by employees of plaintiff in connection with their work on property owned and controlled by plaintiff in Duval County, Florida.

Plaintiff further prays:

7. That the defendant labor organization, its appropriate officers, agents, servants and employees and the other defendants herein be directed and mandatorily enjoined to withdraw and countermand any order, directive, recommendation, request or other advice, heretofore issued by any of defendants' officers, agents, attorneys, or members, asking any of plaintiff's employees not to render service in connection with the operation of the plaintiff.

8. That plaintiff be granted such other and further relief as the case may require and as the Court shall deem proper.

COUNT III

1. Plaintiff realleges all of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11 of Count I herein.

13. Plaintiff holds itself out, and is required by law, to provide common carrier transportation service to the public in accordance with its tariffs, schedules, etc., on file with the Interstate Commerce Commission and the Florida Public

Utilities Commission. The failure to provide common carrier services required by law will subject plaintiff to damages, fines and penalties.

14. The aforesaid activities of the BLE and its members and of defendants Sims and Eason constitute the establishment of illegal picketing or patrolling of the aforesaid employee entrances to property owned and controlled solely by ACL, including that certain property at Moncrief Yard in Duval County, Florida. Said activities are in violation of the Interstate Commerce Act and the Railway Labor Act.

15. At all times material hereto and presently there has been and is now no labor dispute between ACL and its employees nor between ACL and the employees of FEC which has given rise to the aforementioned activities of defendants. At all times material hereto and presently there has and now does exist a collective bargaining agreement between ACL and its employees represented by BLE, which agreement is presently in full force and effect. No labor dispute exists under said agreement for which the aforesaid activities of defendants occurred.

WHEREFORE, plaintiff prays that this Court issue a temporary restraining order forthwith and without notice and a preliminary injunction to be made permanent on final hearing, enjoining and restraining the above captioned defendant labor organization and the individual defendants, individually and as representatives, agents, officers, servants of the members of the class and craft represented by said labor organization, jointly and severally, and all other persons acting at the direction of or in active concert or participation with them, and all persons receiving notice of any such orders of the Court from:

1. Impeding, obstructing, tampering, or interfering with the business and operations of plaintiff conducted and carried out by plaintiff on property under the ownership or control of plaintiff in Duval County, Florida, including without limitation that property known as Moncrief Yard.

2. Directing, ordering, inducing, causing, coercing, authorizing, recommending, sanctioning, calling, continuing, encouraging, assisting or participating in any strike, slow-down, stoppage of work, or other collective or concerted action designed to interrupt, retard or in any way impair the operation of plaintiff's business as conducted by plaintiff on property owned or controlled by plaintiff in Duval County, Florida, including without limitation that property known as Moncrief Yard.

3. Ordering, causing, authorizing, inducing, or attempting to induce, any employee of plaintiff to refuse to perform such employee's regularly assigned duties, including without limitation those in regard to car service, switching, handling, unloading, moving, or other activities relating to or involving cars, rolling stock, engines, cuts, or trains of cars or any contents thereof located on property owned or controlled by plaintiff in Duval County, including without limitation that property known as Moncrief Yard.

4. Interfering with employees of plaintiff in the performance of their respective duties of their employment by fines or otherwise, or paying any benefit and giving any money or anything of value to any employee of plaintiff who refuses a lawful order to perform services for plaintiff in accordance with any collective bargaining agreement covering said services in, on or about plaintiff's facilities or supporting in any way any employee of plaintiff who refuses to obey a lawful order or request to perform such services.

5. Inducing or attempting to induce, individually or collectively, any other employee or class or group of employees of the plaintiff to perform any of the foregoing acts.

6. Directing, authorizing, ordering, sanctioning, or participating in patrolling, picketing, or blockading of any entrances or exits of any kind or description used by employees of plaintiff in connection with their work on property owned and controlled by plaintiff in Duval County, Florida.

Plaintiff further prays:

7. That the defendant labor organization, its appropriate officers, agents, servants and employees and the other defendants herein be directed and mandatorily enjoined to withdraw and countermand any order, directive, recommendation, request or other advice, heretofore issued by any of defendant's officers, agents, attorneys, or members, asking any of plaintiff's employees not to render service in connection with the operation of the plaintiff.

8. That plaintiff be granted such other and further relief as the case may require and as the Court shall deem proper.

ROGERS, TOWERS, BAILEY, JONES & GAY
By C. D. TOWERS, JR.

1300 Florida Title Building
Jacksonville, Florida 32202
Attorneys for Plaintiff

[Verified by L. T. Andrews, General Manager of plaintiff corporation on April 25, 1967.]

EXHIBIT A ANNEXED TO COMPLAINT

[Letterhead of Brotherhood of Locomotive Engineers,
Cleveland; Ohio 44114.]

Jacksonville, Florida
April 23, 1967

To All ACL Employees
Jacksonville, Florida

Dear Sirs and Brothers:

The FEC's striking engineers are clearly engaged in a major dispute (under the Railway Labor Act) against the FEC, we have the right to appeal to the employees of the ACL for help, to make common cause with us by refusing to handle FEC freight.

The FEC and its SCABS with the assistance rendered by the ACL are causing our engineers to suffer loss of all contract rights. We appeal to you to make common cause with us in this fight for our jobs. No freight from ACL means no money for FEC and its SCABS. HELP US.

Yours fraternally,

/s/ J. D. SIMS

J. D. Sims

*Assistant Grand Chief Engineer
Brotherhood of Locomotive Engineers*

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
No. 67-355-Civil-J.

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,

Defendants.

25 April 1967

At Jacksonville, Florida

Before:

HON. WILLIAM A. McRAE, JR.,

Judge.

**Extracts from Transcript of Hearing on Application
for Temporary Injunction**

[2]

Appearances:

For the Plaintiff—

MESSRS. ROGERS, TOWERS, BAILEY, JONES & GAY,
1300 Florida Title Building,
Jacksonville, Florida 32202

By: CHARLES D. TOWERS, JR., Esq.
ROBERT S. SMITH, Esq.
DAVID M. FOSTER, Esq.
FRANK X. FRIEDMANN, JR., Esq.

For the Defendants—

Messrs. RUTLEDGE & MILLEDGE,
601 Flagler Federal Bldg.,
111 N. E. First Street,
Miami, Florida.

By: ALLAN MILLEDGE, Esq.
RICHARD L. HORN, Esq.

[Testimony of MARSHALL COX JENNETTE—Direct]

[5]

Q. All right, sir. Now, Mr. Jennette, were you on duty over at Moncrief Yard in the early hours of this morning?

A. Yes, sir, I was.

Q. All right, sir. Now, would you tell us what took place out at the yard and in the surrounding area shortly after midnight in connection with your engine crews? A. We had one crew that went on duty at 11:30 to stop his engine at 12:05 AM this morning, adjoining—on tracks adjoining, right next to the yard office.

And I went out to the—I heard that the crew had stopped work and went out to see who it was, and it was Engineer J. R. Stalings; and he had gotten off the engine with his bag and was walking away from the engine toward the parking lot.

Two of his trainmen were very close to him, and we called to him and he stopped; and we asked him why he was leaving the engine and he said that he had been asked to handle some cars destined to [6] the East Coast Railroad and that he could not handle those cars. That he had worked the night before handling them and that he had decided that he could not handle them any longer.

And we asked him who instructed him not to handle the cars, and he said that the Brotherhood of Locomotive Engineers—

.

Q. Go ahead Mr. Jennette. A. He said that he had been a member of the Brotherhood of Locomotive Engineers for many years, paying dues, and that he didn't see any need of belonging to an organization unless he was going to do what he was told to do by them.

And we asked him who in the organization gave him such instructions, and he said the Vice Chairman, Mr. Sims.

.

[7]

Q. Now, Mr. Jennette, would you tell the Court what activities, if any, began this past Sunday, two days ago, in the close proximity of your Moncrief Yard? A. Well, I got home—got a call Sunday afternoon, about 3:00 o'clock, that there was some Florida East Coast engineers on Fifth Street, leading into the Moncrief Yard, and they were displaying some signs.

And I immediately went to Moncrief Yard.

I observed six Florida East Coast engineers who had some signs that were very prominently being displayed, and I asked what the intent of the signs was, and they said it was to stop the interchange [8] of cars between the Coast Line and the Florida East Coast Railroad. That they were not asking the Coast Line employees to refrain from reporting to work. Merely the intent of them was to stop the cars from being interchanged between the Coast Line and the Florida East Coast Railroad.

Q. All right, sir. Now that was on Sunday, the 23rd of April? A. That was Sunday afternoon, somewhere between three and four o'clock, when I first arrived there.

.

[9] Q. All right, sir. When did you next observe any activities of this nature? A. On Monday morning I arrived there at 6:40 and the same men with the same signs were at the same location on Fifth Street leading into Moncrief Yard and they were stopping or attempting to stop cars. Some stopped and some didn't.

Those that didn't understand what it was would stop, and these men would go over to the cars and have conversations with the occupants of the cars; conversation which I did not hear or participate in.

[12]

Q. Now, Mr. Jennette, did you tell us what time this incident occurred that you described with Mr. Stalings?

A. Mr. Stalings got off the engine at 12:05 AM this morning.

Q. All right, sir. That is, April 25? Today? A. April 25.

Q. All right, sir. Now would you tell the Court what else took place after this Stalings incident this morning?

A. Well, I went back in the Superintendent of Terminals' office in the yard office.

At 12:15 this morning Engineer Brown, C. E. Brown and his crew, came in the yard office and on into the office in which Mr. Wright, the Train Master, and I were located.

And he was asked why he was coming in, and he said that he had been asked to move some cars off of Track 6 in H Yard, which had been delivered by the Florida East Coast Railroad, and that he could not switch those cars.

[13] We asked him why he could not, and he said that he been asked by Mr. Sims, of the Brotherhood of Locomotive Engineers, not to handle cars to and from the Florida East Coast Railroad.

The Court: What is the exact office that Mr. J. D. Sims occupies, Mr. Jennette?

The Witness: The yard office?

The Court: No. What is his official connection with the Union?

The Witness: Mr. Sims?

The Court: Yes.

The Witness: I believe it is Vice Chairman of the Brotherhood of Locomotive Engineers, isn't it?

Mr. Milledge: It is Assistant Grand Chief Engineer. A Grand—Lodge office; an international office.

The Court: He is the top man locally of the Brotherhood, is that correct?

Mr. Milledge: He is assigned from the Cleveland office.

The Court: Yes.

Mr. Milledge: For this particular [14] problem. He is the top man on this problem.

[16]

Q. All right. Now, Mr. Jennette, would you please describe the next incident, if any, that took [17] place in the early morning hours this morning? A. Well, we attempted to get someone to relieve the first engineer, Stallings, who had walked off; and the only man we had on the Extra Board was Mr. M. L. Adams, and he was called to come and work this job.

And he got a call at the Yard office to call his Local Chairman, Mr. Shirley, upon arrival at the Yard office; and before he got there we put someone on the engine to go ahead and start working. And when Mr. Adams got there he made some phone calls and he stated that he could not go to work; that he could not handle cars to or from the Florida East Coast Railroad.

And we asked him why, and he said that he had been asked by Mr. Sims not to handle the cars.

[18]

Q. Mr. Jennette, would you clarify a little bit whether Mr. Shirley called him—telephoned him—or did he telephone Mr. Shirley from the Yard office? A. Mr. Shirley called the Yard office before he got there and left a number for him to call; so he actually called Mr. Shirley upon arrival at the Yard.

Q. Now who is Mr. Shirley? A. He is the Atlantic Coast Line's Local Chairman for the Locomotive Engineers.

[20] Q. All right, sir. Did Mr. Adams ever get up into the engine at all? A. No, sir.

Q. He came direct to the Yard office and he left direct from there? A. Yes, sir.

All right, sir. What was the next happening out there, out of the ordinary? A. Well, later on this morning there were two other incidents where engineers refused to handle cars that were destined to the FEC Railroad, which were placed in the B Yard of the Atlantic Coast Line's Moncrief location.

Q. This B Yard, is it entirely within the confines of property owned by the Atlantic Coast Line Railroad?

[21] A. It is, yes sir.

Q. Are all these other yards that you have referred to designated within the confines of the property lines of the Moncrief Yard? A. Oh yes. That is Atlantic Coast Line Railroad property altogether.

Now have there been anymore occurrences that have taken place out there? A. Well, at 7:55 this morning Engineer Baker, who was instructed to pull some cars on Track 17 in C Yard and place them in B Yard, which were destined to the Florida East Coast Railroad, refused to move those cars; and I went with Mr. Strickland out to the engine, and he stated that he feared harm to him or his family and that for that reason he would not [22] want to move these cars. And he and his fireman both left the job.

.

[23] Q. Did you have a telephone conversation last night? With Mr. Sims? A. I got a call just before one AM this morning to call Mr. Sims, and I dialed him three times and on the third time I was able to get him. His line was busy the first two times.

Q. All right, sir. Would you tell the Court what he said to you about the operation of the Moncrief Yard? A. Well, he seemed to be quite upset and his words to me were that he was going to shut down the Coast Line Railroad and I could tell my management about it.

[29]

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Cross Examination by Mr. Milledge:

Q. Mr. Jennette, your men at Moncrief Yard go on duty when, generally? A. At three times a day, under our contract, we can put switch crews on duty.

Between 6:30 AM and 7:59 AM. Between—

The Court: What are those hours again? 6:30?

The Witness: 6:30 AM and 7:59 AM.

Between 2:30 PM and 4:00 PM.

And between 10:30 PM and 11:59 PM.

By Mr. Milledge:

Q. Now when you came out on this past Sunday afternoon to the Moncrief Yard, to the employees [30] entrance, were the men—the FEC engineers—already out there with their signs? A. Yes, sir.

Q. Do you know or have you heard about when they came out? A. Around 2:15 PM.

Q. And they stayed there until about four? A. It was later than that. I think it was nearer five.

I said to them, "All the crews are on duty." The six crews had gone on duty. "And there will be no more going on duty until after ten o'clock tonight."

They immediately left.

Q. All right. Now when you went out on Sunday afternoon did you identify yourself to them? A. Yes, sir. Mr. Sawyer—I went over and talked to him and he introduced me to other men out there.

Q. All right. You knew who they were? A. Yes, sir.

Q. All right. And did they tell you why they were out there? A. Yes, sir.

[31] Q. Did they tell you that they were asking men not to go to work? A. No, sir. They said they were asking men not to handle Florida East Coast cars to or from, and that they were urging them to go to work.

Q. Now have these pickets, to your knowledge, been out there at the Moncrief Yard at the employees entrance at each crew change or at the times of crew change since then—Sunday? A. Yes, sir. Everytime, from Sunday PM.

Q. And they come a little before the crew—the first crew would report to work, and then leave sometime after the last crew has reported? A. Yes, sir. They come about 30 or 40 minutes before crew changes.

Q. All right. You haven't been out there on every occasion but you have been out there on some? A. I have been out there part of every occasion, I believe.

Q. Have you? All right. A. I believe I have.

Q. All right. And you have had conversations either with pickets or with some Brotherhood of Locomotive Engineers representative on each of those [32] occasions, haven't you? A. Except yesterday afternoon.

Q. All right. A. I didn't stop as I passed there around three PM.

Q. All right. And the instructions—the operation has remained the same, has it not, from Sunday afternoon on? Until now? A. The operation or the signs?

Q. The signs? A. The signs have all been the same.

Q. The hand-outs and what they are requesting of the ACL employees. A. As far as I can tell, it has been the same.

Q. Now where is interchange between ACL and FEC performed? A. It is performed in H and B—B and H Yard, on Atlantic Coast Line property.

Q. Now, the Florida East Coast engines come on to ACL property? A. They come on ACL tracks and property in H Yard to make deliveries and in B Yard to pick up cars destined to the FEC.

Q. Where do those FEC engines come from? [33] A. The Bowden Yard.

Q. And that is across the St. Johns River, south of the St. Johns River? A. That's right, yes sir.

Q. And those FEC engines come on up and they come all the way through the Jacksonville Terminal property? A. Yes, sir.

Q. Then they come into Moncrief Yard? A. That's right, yes, sir.

Q. Now do ACL engines make deliveries to or receive freight from Bowden Yard? That is, the FEC Yard? A. Only through the FEC.

Q. All right. In other words, all interchange of freight with FEC, both receiving and delivery—both ways—is done in Moncrief Yard? A. Moncrief Yard and Yards B and H.

Q. And are there tracks there that are designated in the B and H Yard as interchange tracks? A. Yes, sir.

Q. How often per day do FEC engines come into your yard? A. Well, on an average I would say at least six times a day.

[34] Q. Now the men, as you understand it, are they being asked not to classify—that is, not to move around—let's just strike that.

You know what "classify" means. Right? A. I do, yes.

Q. All right. Have they been asked not to classify freight up in the C Yard part of Moncrief? A. Apparently they have not been asked not to classify inbound trains; but apparently they have been asked not to classify inbound cuts of cars wholly from the Florida East Coast, because we have had them to refuse to do that.

The Court: What do you mean by "classify"?

The Witness: Break up and put them in blocks where they are going to move to points, say, Waycross—Atlanta—Savannah—Florence—Richmond.

We get them scrambled, so to speak, and we block them out for certain trains for certain Terminals.

The Court: Thank you.

By Mr. Milledge:

Q. Mr. Jennette, you really have a number [35] of separate Yards within Moncrief, is that right? A. Moncrief Freight Yard is made up of B Yard, C Yard, and H Yard where the primary classification and the inbound trains are received and depart.

We have another Yard known as F Yard which deals almost wholly with the Fruit Growers Express operations adjoining us there.

Q. Now, in regard to the FEC what is done in B Yard?
A. Cars are usually classified in H Yard, and some in C Yard. And when these cuts reach, say, 30 or 40 cars, or the cars on hand have been completed, they are then moved from C Yard down into B Yard where later they are picked up by FEC engines.

Q. When an FEC engine comes up north—comes from Bowden— A. Yes, sir?

Q. And comes through Jacksonville Terminal and comes into your Moncrief Yard with a cut of cars from FEC destined to ACL, what does that FEC engine do with them? A. That pulls in H Yard and cuts off.

Q. All right. Now have any of the engineers refused to pick up that cut of cars or a cut of cars in H Yard from FEC? [36] A. Yes, sir.

Q. And who was that? A. Mr. Stalings.

Q. All right. A. And Mr. Adams.

Q. All right. A. No. Mr. Stalings and Mr. Brown. Excuse me.

Q. Mr. Stalings and Mr. Brown? A. Yes.

Q. Now their job with ACL would have been to take that cut—they would have been the first ACL engine or ACL crew to handle that cut of FEC cars—the cut brought in by FEC. A. That is true.

Q. And so those two engineers refused to move them? A. Yes.

Q. Right? A. Yes.

Q. Now where would they normally have been taken from there? From that interchange track in H Yard?
A. They would have been pulled up the ladder [37] by the Yard office and classified and blocked, as I referred to awhile ago.

Q. Would they have been moved up into H Yard? I mean into C Yard? A. Some of them might have been classified in C Yard and some of them might have been classified in H Yard, depending on what train they were building at that time.

Q. All right. Now when Mr. Brown—Engineer Brown—refused to couple up, I guess you would say— A. Yes.

Q. —with this cut that had been—cars that had been brought in by the FEC, he was relieved. A. Yes.

Q. Was he not? A. Yes, sir.

Q. Now did you relieve him just of the one move up into C Yard or further into H Yard? Or did you relieve him for the rest of that tour of duty? A. He was relieved and he took his bag and left the property; so you might say that.

The Court: I am not sure that I understand what you mean when you say "relieved."

[38] The Witness: Well, he was already off the engine in the Yard office, and the engine was out there and had work to do; and he took his bag—most engineers carry a little hand bag with them—and he left the property; got in his car and drove away.

It means that his pay stopped, if that is better understood.

By Mr. Milledge:

Q. When we talk about taking one's bag, it is not like leaving home or anything. They carry a bag when they get on the engine? A. That's right.

Q. And they take the bag home with them each night, don't they? A. Yes, sir.

Q. Mr. Jennette, there was a little unhappiness last night about what "relief" did mean, wasn't there?

Wasn't there quite a bit of conversation about that between you and Mr. Sims and all of us involved?

Wasn't there? I am not asking you what the conversation was. There was conversation about it? [39] A. There was conversation.

Q. All right. A. Around midnight.

Q. I think that is all I really ask.

Now did you have any engineers refuse to make delivery into B Yard for FEC? A. Yes, sir.

Q. All right, who was that? A. I believe that the only instance we had of that was at 7:55 this morning when Mr. Baker, whom I referred to, refused to make a delivery in B Yard.

Q. Now that would have been the last ACL move before FEC picked it up? A. Yes.

Q. In other words, that engine was delivered into the interchange track and then FEC would come with an engine and pick it up? A. That is true.

Q. And that interchange track, in Yard B, is in the south end of Moncrief Yard? A. That is true.

Q. That is ACL property? A. Yes, sir.

[40] Q. Now you observed the activities of these FEC engineers at the Moncrief employees entrance. You had a chance to observe their demeanor, and so forth? A. Yes.

Q. Was their demeanor in all respects peaceful? A. It certainly was.

Q. Now if the engineers of the ACL—let me strike that and start all over.

If no cars were delivered into your interchange track in B Yard for FEC that would stop all freight movement from ACL to FEC, would it not? A. Yes, sir.

Q. And if your engineers would not pick up the interchange that FEC leaves in H Yard, that would stop all

northbound movement from FEC to ACL? A. Yes, sir. And it would also tie up Moncrief Yard too.

Q. Now, let's just talk about that on northbound movements.

How many tracks do you have set aside for the FEC to leave freight in for interchange? A. I believe, under the agreement, there [41] were approximately maybe three tracks mentioned—three or four tracks mentioned.

Q. And so if the ACL engineers refuse to take that freight out of those interchange tracks in H Yard, how would that tie up your Yard? A. Well we use those same tracks for the Seaboard to make deliveries too; and we have to stagger it from one track to another when the Seaboard and East Coast are coming in. And sometimes we have to hold them out until we can clear a track to make room for one or the other of them to come in that part of H Yard.

The Court: In effect, it amounts to the tracks just being blocked by cars?

The Witness: Yes, sir.

The Court: That would be true both of deliveries to ACL on H Yard and the pickups of ACL on B Yard?

The Witness: That's right.

The Court: It would be blocks or cuts of cars that would block the tracks?

The Witness: They would be literally reducing the Yard by that many tracks. The Yard is already too small.

[42] *By Mr. Milledge:*

Q. Well now, how many interchange tracks do you have in H Yard designated for FEC? A. I think under the agreement there were either three or four mentioned.

Q. All right. A. I am not sure.

Q. And how many tracks are there all told in H Yard?

A. I believe there are ten—ten or eleven; I am not sure.

Q. And how many tracks in B Yard are designated for FEC interchange? A. About the same number. There are about two or three tracks mentioned in B Yard for the interchange.

Q. How many tracks are there altogether in B Yard?

A. Oh, again, I think there are approximately ten tracks maybe in B Yard.

There might be a few more.

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[43]

Redirect Examination by Mr. Towers:

Q. Mr. Jennette, just so we can get straight geographically, could you tell the Court approximately where the Florida East Coast property line ends with respect to the St. Johns River or any other landmark? A. The Florida East Coast has a right-of-way across the St. Johns River and up to Riverside Avenue of one track, which would be considered the southbound track in a double track operation.

The northbound track, between the river and the Riverside Avenue Bridge, is owned by the Jacksonville Terminal Company.

Q. All right, sir. Now, after the Florida East Coast Line property ends, what is the next property to the north of that point? A. That is the Jacksonville Terminal Company property.

Q. All right, sir. Then, continuing in a northerly direction, where do you come to the property of the Atlantic Coast Line Railroad, as far as the [44] railroad tracks

are concerned? A. Soon after you cross over McQuade Street what is known as the Moncrief Yard property starts. Moncrief Yard begins.

Q. Where is McQuade Street with reference to the south end of Moncrief Yard? A. It is right near the south end of Moncrief Yard.

Q. Sir? A. It is at the south end of Moncrief Yard.

Q. The south end of Moncrief Yard is at McQuade Street, is that right? A. That's right.

Q. And then the Yard extends on up in a northerly direction to approximately Old Kings Road? A. That is true, yes, sir.

Q. All right now, all of these movements that we have reference to that these engineers refused to do are movements within the property confines that you have given us here that constitutes Moncrief Yard? A. Yes, sir.

Q. Approximately how far is it from the [45] north end of the Florida East Coast Line property and the south end of the Atlantic Coast Line's Moncrief Yard there near McQuade Street? A. Well, it must be around a mile and a quarter or a mile and a half, at least.

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[55]

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DEWITT M. STRICKLAND produced and sworn as a material witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Towers:

• • • • •

Q. All right, sir. Now, Mr. Strickland, [56] do you refer to certain tracks within Moncrief Yard as H Yard or B Yard or C Yard, or definitions of that type? A. Yes, sir. Moncrief Yard consists of several Yards. We designate certain sections as Yards.

Q. Is it all one integral part? A. Yes, sir.

Q. In other words, the fact that you call certain tracks a "Yard" or certain tracks "H Yard" or certain tracks "B Yard", or something else, is just a way of distinguishing those particular tracks from other tracks?

They are all within Moncrief Yard; is that correct? A. That is correct.

Q. It is one integrated operation? A. Correct.

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Q. All right, sir. Would you tell the Court the details of these occurrences? A. About 4:45 AM this morning the General [57] Yard Master, Mr. Paine, informed me that he had a Yard crew that he had instructed to deliver or move some cars from C Yard down to B Yard and the engineer had said he couldn't move the cars.

At that time the engine was approximately 200 feet from the office where I was and I walked out to the engine.

As I got near the engine, Mr. G. E. Black was the Engineer and he came off of the engine with his bag.

And I asked him what the trouble was and he said he couldn't deliver cars down to the B Yard.

Q. When you say "down"— A. South.

Q. Are you indicating in a southerly direction, all within the Yard? A. Yes. All within the Yard.

And he replied that he had his instructions and that I had mine, and he had been asked not to move the cars from C Yard to B Yard, all within the Moncrief area.

Q. Did he say who had instructed him not to? A. He had received those instructions, [58] he said, from Mr. Sims and Mr. Shirley.

Q. He had received them from Mr. Sims and Mr. Shirley, is that right? A. Yes.

Q. All right, sir. What else took place in that conversation? A. I asked him if he still didn't want to move

the cars or wouldn't move the cars, and when he said that he wouldn't, I told him that he was relieved as of 4:55 AM.

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The Court: You can hold it up. Possibly Mr. Robinson can assist you there.

I am still a little uncertain about your use of the word "relieve."

[59] You just stopped his pay and said, "You can go home." Or did you fire him? Or what did you do?

The Witness: No, sir. We just told him he was relieved of that assignment.

The Court: Of that particular assignment?

The Witness: Yes. We didn't specify the assignment, Judge. We just said, "You are relieved;" because this is what we have got for him to do.

The Court: He was relieved of his duty at that time.

The Witness: At that time.

The Court: At that time?

The Witness: Yes, sir.

The Court: Of that particular assignment.

The Witness: That is correct.

The Court: I see.

[66]

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Mr. Milledge: I will just ask him a few questions while the map is up.

Mr. Towers: That's all right.

Mr. Milledge: Mr. Strickland, I will talk to you back here, but how far do the FEC engines [67] come into this Yard? That is, Moncrief Yard?

The Witness: When they are delivering traffic from Bowden to the Coast Line, they come in H Yard, and the engine itself will go almost to the Yard office, because they have to deliver the documents.

The cars are dropped before they get to the Yard office. They cut those off.

Mr. Milledge: All right, sir. So when they are bringing northbound traffic they bring it up into H Yard?

The Witness: Yes, sir.

Mr. Milledge: That engine?

The Witness: Yes.

Mr. Milledge: Then that engine travels all the way down here in the vicinity of the Yard office?

The Witness: Right close to the Yard office.

Mr. Milledge: And then it comes all the way back out. All right, sir.

Now, how about when an FEC engine is coming to receive traffic?

The Witness: They come into B Yard from the south end.

[68] We have a clerk located in a little office down near B Yard or by B Yard there, and the documents for the cars and the check is made by that clerk.

They simply come up as far as is necessary to get to the cars at the south end of the Yard.

Mr. Milledge: The Yard office, is it in the area of this large building that says "Motor Shop"?

The Witness: That is the Shop; the Yard office.

[69]

Q. All right. Would you tell the Court about this, and you may demonstrate on this map when you refer to the Yard which may or may not be involved. A. About 7:45 AM I was informed by the Yard Master that one of the engines did not want to move cars from C Yard 17, which would be approximately along there, down to B Yard, which would be down here.

I walked out and the engine was about—oh maybe a hundred feet from where we were.

Q. Where was that on the map? A. The engine was along in this area, in the north end of Track 18.

Q. All right, sir. A. And Mr. F. L. Baker was the Engineer, [70] and he had a Fireman, Mr. Mathews, J. R. Mathews.

Mr. Baker was still up on the engine and I got up on the engine and talked to Mr. Baker and I asked him what the trouble was.

And he said he couldn't move the cars from C Yard 17 down to B Yard.

And I asked him why, if he had any instructions not to move them; and he said he had not.

But he did say that he had delivered cars or made cars or moved cars from C Yard to B Yard the day before and he had received a telephone call—which would be last night now—threatening him or his family if he continued to move these cars.

He said he was just afraid to move them. He was not so much concerned about himself as he was his wife.

And since that was his job that we had for that assignment I notified Mr. Baker, or advised him, at 7:55 AM, that he was relieved.

Now Mr. Mathews—

Q. He was the Fireman with Mr. Baker? A. He was the Fireman with Mr. Baker. And, as Mr. Baker was leaving—I had not talked with Mr. Mathews—but he said; "Well, I am going too, because I received a telephone call last night also, threatening me."

[71]

Q. Mr. Strickland, previous to these occasions—previous to Sunday, April 23, what was the condition of Moncrief Yard as far as traffic is concerned? A. Traffic had been

very heavy through Moncrief Yard. We had been operating at capacity; all we could handle.

Q. All right, sir. Now, Mr. Strickland, with this conduct on the part of these employees, would you tell the Court what will happen with respect to the operation of Moncrief Yard? A. If we don't keep the cars moving we will [72] become blocked and congested.

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Cross Examination by Mr. Milledge:

Q. Mr. Strickland, since last Sunday the engineers whose duties do not involve picking up interchange from the FEC in H Yard or delivering interchange to FEC in B Yard—the other engineers—have they all performed their duties? A. Yes, sir.

Q. And the men who have not made these movements you have talked about, up to that point in their tour of duty they have been doing their regular work? A. Yes, sir.

Q. Right. And at the point where they were stopping their engines, as you have told us, that was when they either had to carry freight down to FEC or pick it up from FEC. I mean from the interchange track. A. They were carrying freight down to B Yard where the FEC would eventually get it; yes, sir.

Q. All right. In the two instances you testified to. [73] A. Both of the incidents I testified to.

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[Testimony of L. T. ANDREWS—Direct]

[76]

Q. Do the Coast Line tracks in any-way join to or directly connect with the tracks of the Florida East Coast? A. No, sir.

Q. Are the operations of the two companies in any way integrated? A. No, sir.

[77] Q. Does the Coast Line furnish any switching service to the Florida East Coast? A. No, sir.

Q. Does it furnish any repairs or maintenance upon any Florida East Coast cars or engines? A. No, sir.

Q. Does the Florida East Coast own any stock in the Coast Line or does it in any way control the operations or management of the Coast Line? A. No, sir, it does not.

Q. What is the southernmost point of the Coast Line's property in relationship to the northernmost portion of the FEC's property which you just described. A. The southernmost property of the Atlantic Coast Line ends right about McQuade Street, which was pointed out on the exhibit—the map of the Yard—a short time ago; and it is approximately, I would say, about a mile and a half distance between the Atlantic Coast Line and the Florida East Coast tracks.

Q. All right, sir. Does the Coast Line furnish any switching service to the Florida East Coast cuts and engines which bring Florida East Coast cars on to ACL property? [78] A. No, sir.

Q. Do any Coast Line employees furnish any signals for FEC crews in Moncrief Yard? A. No, sir.

Q. Does the Atlantic Coast Line, in Moncrief Yard, furnish any personnel services to Florida East Coast employees? A. No, sir, we do not.

Q. Do any FEC employees report to or leave work on or at Moncrief Yard? A. No, sir, they do not.

Q. Do any FEC employees report to or leave work from any property owned by the ACL? A. No, sir.

Q. Does the ACL in Moncrief Yard furnish any personnel services to Florida East Coast employees? A. No, sir.

Q. Does the ACL furnish any minor or major repairs or maintenance on cars or engines for the account of the FEC? A. No, sir.

Q. Does ACL provide any maintenance on tracks owned by FEC or over which FEC has an exclusive easement? A. No, sir, we do not.

[79] Q. Does the FEC own any stock in the ACL? A. No, sir.

Q. Does the ACL own any stock in the FEC? A. No, sir.

Q. Do ACL and FEC have any operating agreement which controls or affects the management of the Coast Line? A. No, sir.

Q. Does the FEC have any prerogative in the election of officers of the ACL? A. No, sir.

Q. Does the ACL provide to the FEC any facilities or services which constitute an integral part of the day to day operations of the FEC? A. No, sir, we do not.

.

[80] Q. All right, sir. And will you briefly describe the movements of cars and Yard engines coming from the FEC for interchange with the Coast Line? A. On the cars and Yard engines coming from the FEC to interchange with the Atlantic Coast Line, they come up over the Florida East Coast from its Bowden Yard; across the St. Johns River, where they enter upon the tracks of the Jacksonville Terminal Company and travel about a mile and a half.

Then they enter upon tracks of the Atlantic Coast Line at the south end of Moncrief Yard.

Q. All right, sir. Now at what point do these cars become the sole property and responsibility of the Atlantic Coast Line? A. After the cars are placed in the desig-

nated interchange tracks in H Yard, upon receipt from the FEC, the engine cuts loose, and the weigh bill or documents are delivered to the Coast Line forces at the Yard office at Moncrief; the cars then belong to the Atlantic Coast Line Railroad.

Q. At that time do they have the responsibility for them? [81] A. That is correct.

Q. Please tell us what is done with cars coming into Moncrief Yard which are destined for delivery to the Florida East Coast? A. Cars arriving at Moncrief Yard for delivery to the FEC, to the Florida East Coast, are separated or sorted out in the C Yard area; placed on certain tracks; and when we get, oh, 20 to 30 cars or so blocked together, then we send them to B Yard via switch engine, at which point they are placed in designated interchange tracks for the Florida East Coast.

The documents covering the cars are made available at the little Yard office located adjacent to the B Yard track, where the documents are then available to the FEC.

And, after the cars are placed in that designated track and the documents are then made ready for the FEC cars, the cars then belong to the FEC, but not until that transaction is completed.

Q. All right, sir. Now, after they have been placed on these tracks that you have just described and the documents are made available for the FEC, do the cars then become the sole property and the [82] responsibility of the FEC? A. That is correct.

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Q. Tell us, sir, what the results have [83] been from what has taken place within the last 48 hours. A. Well, on account of the pickets, or what you may call them, being

placed at the entrance to the Moncrief Yard and the signs they are displaying, and the conversations, and the letters they are displaying to Coast Line employees, there has been a general unrest or unhappy situation at Moncrief.

And, commencing shortly after midnight last night, we had some definite refusals on the part of the Coast Line assigned engineers to move cars from one location to another within Moncrief Yard, and that disrupts the orderly procedure of the Yard operations and causes a very bad congestion, and we get behind with the work; and it is just a bad operation.

Q. Is it possible to move, classify, and place upon tracks for delivery cars destined to other railroads, as well as cars destined to other points on the Coast Line tracks, without also moving cars destined for the FEC? A. No, sir. A train comes into Moncrief Yard. It will have cars for Jacksonville proper, for the Seaboard—for the Southern—for the FEC. And, in order separate the cars as to where they go [84] and how to get them in proper blocks or cuts for delivery to the various railroads or for placement in Jacksonville, you have got to break up the entire train; which means the crew assigned to perform that work has to handle all the cars in the train in order to carry on its assignment.

Q. Is it possible to operate Moncrief Yard with supervisory personnel? A. No, sir. It is a big operation out there.

Q. Can Moncrief Yard operate without handling all of the cars that come into it—that is to say, without speedily and efficiently classifying and dispersing cars coming into the Yard, for proper delivery to other points?

The Witness: No, sir. We could not operate or cannot operate Moncrief Yard unless all of the cars received into the Yard are properly and promptly dispatched to whatever destinations or [85] locations they should be handled to.

Q. Kindly describe the manner in which ACL is suffering damage, if in fact it is, as a result of what you have just told us. A. Well, right now the situation is very badly congested out there. And of course when we had a work stoppage or slow-down the customers of the Coast Line very promptly know about it. We are not able to handle the business and make deliveries or handle the out-bound shipments like we should. And they immediately look around to see if they can find some other way to handle their freight.

As to the monetary suffering or loss that we have, it is not practical to determine it at this time; but it is certainly reasonable to assume that it is occurring.

Q. Is it possible to interchange with the Seaboard, Jacksonville Terminal, or Southern Railway, with your employees refusing to handle cars destined to or coming from the FEC? A. No, sir, we have got to keep all of the cars moving in and out of the Yard. We can't just move one particular—cars, for one segment of our operation.

[86] Q. All right, sir. With respect to your answer to the preceding question—about shippers who choose another method of shipping whenever they are unable to ship over ACL, is this a temporary or permanent loss of revenue? A. In many cases it is a permanent loss.

If a man or concern resorts to some other means to get his goods transported, sometimes he finds that—"Well, you couldn't handle me in the situation when I needed your

services so I will just stick with the fellow that could." It could mean a permanent loss.

Q. Well will railroad traffic be able to slow in a northerly direction out of Moncrief Yard and in a southerly direction into Moncrief Yard in spite of the situation that has been described? A. No sir. We cannot continue to move the traffic unless we get the situation straightened out at Moncrief.

Q. Are through freight trains destined for Waycross and points north from Jacksonville made up in the Moncrief Yard? A. Yes, sir.

Q. Are through freight trains from Waycross [87] and other points north broken up and reclassified in the Moncrief Yard? A. Yes, sir.

Q. Please describe the type of freight being carried on such freight trains. A. The trains handle all commodities, of all descriptions. Handle a lot of perishables. And they handle U.S. mail and Piggyback Service.

They handle Government materials and some of it is incident to the present Vietnam situation.

And just any kind of commodity that the shippers have for movement.

Q. Approximately how many of the freight trains just described move into and out of Moncrief Yard each day?

A. There is an average of about nine trains in and out of Moncrief Yard from the north; and to the south of Tampa side there would be, oh, about four or five in each direction.

[88]

Q. Do all main line tracks from the north into the State of Florida, and from Tampa through Duval County, pass through Moncrief Yard? A. Yes, sir.

Q. Do all ACL trains going to Richmond through Waycross and points north have to pass through Moncrief Yard? A. Yes, sir. When they come from Jacksonville.

[94]

Q. Could you please tell us the total number of cars reclassified in Moncrief Yard in December of 1966? A. We handled approximately ninety two hundred cars on the basis of a double car count—a car in and a car out—counting twice; but, as single [95] cars, we would half that and make it about 46,000 cars that were handled at Moncrief.

Q. Approximately how many of these cars came into the Yard from ACL tracks leading into the Yard and that, after reclassification, went out of the Yard over ACL tracks leading out of the Yard?

In other words, they came in as an ACL car and went out as an ACL car. A. Well, out of that 46,000, there was approximately—oh, I would say 35,000 that were Coast Line in and Coast Line out.

[98] *Cross Examination by Mr. Milledge:*

Q. On an average, how many cars are interchanged with FEC each day? ACL and FEC? A. Well, it will vary from month to month.

Some—you know, there is a different flow of traffic for seasons of the year.

If you take a twelve month average, the interchange from the Coast Line to the FEC will be approximately 210 cars from the FEC to the Coast Line. Approximately 210. It is pretty much evened off.

The Court: Two hundred ten over what period of time?

Mr. Milledge: Two hundred ten per day.

The Witness: Per day. By averaging a twelve month period.

The Court: That is each way?

The Witness: Each way, yes, sir.

By Mr. Milledge:

Q. FEC will deliver approximately 210 into H Yard and the ACL will deliver approximately 210 at B Yard to FEC?

A. That is correct.

Q. Now all of the interchange between FEC [99] and ACL takes place on ACL property? A. That is correct.

Q. Now the FEC receives this freight from ACL, Southern, and Seaboard in the Jacksonville area? A. ACL, Southern, and Seaboard. Yes, sir.

Q. Now could you give us an idea, roughly, of how much comes from each road? A. No, sir. I do not have the figures from the Southern and Seaboard. All I have is the Atlantic Coast Line figures.

Q. You are aware, are you not, that the freight received from ACL is in excess of 50 percent of the total freight received by FEC? Fifty percent or slightly over that? A. I just don't know those figures. I haven't checked them out.

Q. All right. In any event, your yearly average is 210 per day each way? A. Each way. That was for the 12 month period ending February, 1967.

Q. Now can you tell us where Seaboard interchanges freight with FEC? A. Seaboard interchanges freight with FEC within the Jacksonville Terminal property.

[100] Q. That is close enough. A. They have got a designation.

Q. TY? A. TY tracks, in the Yard.

Q. In Honeymoon, I believe. Now, how about Southern? Where does it interchange? A. Southern interchanges within the Jacksonville Terminal Company property about that TY or YH Yard, whatever it is. It is on the Jacksonville Terminal Company property.

Q. All right. And the FEC engines run up into the Southern Yards or into the Seaboard Yards? A. FEC engines?

Q. Engines. A. Not into the Southern and Seaboard Yards, no, sir.

Q. All right. The only Yards that FEC engines run into are the Jacksonville Terminal Yards and into the ACL's Moncrief Yard? A. That is correct.

Q. Now does FEC supply any crews that maintain the interchange tracks in Moncrief Yard? A. No, sir.

Q. Who maintains those tracks? [101] A. The Atlantic Coast Line Railroad.

Q. Now where are your main lines in relation to Moncrief Yard? A. The main lines in relation to Moncrief Yard are on what I would describe as the east side, going north; the extreme righthand side.

Q. Do you have—is it two or four main lines that run the whole length there? A. Two.

Q. Two. All right. And, just for instance, at approximately what speed do the main line trains run at through there? A. Well, the speeds—of course we have what we call yard speed, but the main line tracks are completely signaled. They run by signal indication, and then you can govern—run at whatever speed the signals permit, bearing in mind that you have got to stop at a designated place there, to brake down into the Terminal or turn out to go around the Y if you are going around the Y.

Q. Many of the main line movements just go straight on by, don't they? A. That is correct.

Q. If they are southbound, they come on by [102] the Yard and go on down into the Terminal. A. We are talking about passenger trains now.

Q. Passenger trains. A. Yes, sir. The freight trains all go in and out of Moncrief Yard.

Q. Now how long is Moncrief Yard approximately? A. It would be a guess—an estimate—because I don't have any papers here with me to refer to but—wait a minute, I do have—well, this timetable wouldn't give it to me.

I would say approximately two miles.

Q. All right. And over what part of that do the FEC engines run? A. The area that they run, from the south end up to the Yard office, would be roughly a distance of about, I would say, two-thirds of the Yard.

Q. A mile and one-third? A. Something like that.

Q. Now I believe you said that Moncrief Yard—the interchange tracks at least, of Moncrief Yard—were not an integral part of the FEC operation. A. That is correct.

[103] Q. That is what you said. Well, if your crews did not set out and receive interchange in the Moncrief Yard, how would the FEC get the ACL freight? A. Well, the FEC operations, as I refer to "operations," are the operations of its trains and Yards.

Now the interchange is an arrangement between railroads where they swap cars from one railroad to another.

The use of the Moncrief Yard tracks for interchange purposes, on the basis of the present day operations, is a part of the FEC operation.

Q. All right. The use of the interchange tracks of the ACL—that is, the B and H Yards—by FEC is an integral part of FEC's day to day operations.

Is that correct? A. That "integral" kind of confuses me; but it is a part of their normal function.

Q. And if they did not use it everyday they wouldn't get any freight from ACL? A. Not under the basis of the present operating conditions.

Q. All right. And if your Engineers would not put cars into those interchange tracks, FEC would [104] not have any to pick up? A. No, sir. And our Yard would be completely blocked if we couldn't get rid of them.

Q. And if they would not pull them out—if FEC delivers them into the interchange tracks for receipt by ACL—if your employees just left them there—there would be no northbound interchange? A. No, sir, and it would cost the Coast Line a lot of money.

Q. Now you told us a little while ago, I believe, that any slow-down of operation may have long term effect. A. On the loss of business, yes.

Q. All right. And that is because shippers learn about these things pretty fast? A. That is correct.

Q. All right. And if shippers learn that no freight is being interchanged with FEC, is it not reasonable to assume that they will immediately re-route their traffic? A. I can't speak for what the shipper would do.

Q. All right. A. But, unless there was an embargo placed, [105] the Coast Line has no right to refuse traffic from the FEC and no right not to deliver traffic to FEC.

Q. Word of mouth travels pretty fast to shippers? A. That is true.

Q. And I believe you have already told us that if they cannot move it one way they will move it another? A. Yes, sir.

Q. If they cannot move it southbound over FEC they will move it southbound over whatever other line there is avail-

able. A. The industries are going to find a way to move their freight.

Q. And there is another railroad that runs to South Florida, is there not, besides FEC? A. Yes, sir, there is.

[Testimony of J. D. Sims—Direct]

[129]

Q. And are you the Grand Lodge officer assigned to the FEC dispute? A. I am.

Q. Now is the Brotherhood of Locomotive Engineers on strike against the FEC? A. They are.

Q. When did they go on strike? A. March 12, 1967.

Q. Was that what we call a "major dispute" under the Railway Labor Act? A. That is.

[130] Q. That is, a dispute in which one party or the other seeks to change existing contracts? A. That is correct.

Q. And was a Section 6 notice under the Railway Labor Act issued by one side or the other? A. That is correct.

Q. Was that issued by the Florida East Coast? A. That is correct.

Q. And approximately when was that notice issued? A. November 30, 1964.

Q. And in general what did the FEC propose to do? A. The FEC proposed to abrogate the existing contract and substitute, in lieu thereof, a substandard contract, which is commonly referred to on the FEC as a "Yellow Dog."

[131]

Q. Was that proposal essentially the same as the conditions of employment imposed by the Florida East Coast in the Fall of 1963? A. Yes, sir.

Q. Now were there negotiations concerning that FEC Section 6 notice? A. Yes, sir.

Q. Did the matter go to the National Mediation Board? A. Yes, sir.

Q. And did the National Mediation Board terminate its services? A. Yes, sir.

Q. And when did it do that? A. February 5, 1967.

Q. And did it do that by some official document? A. By letter, yes.

Q. By a letter to whom? [132] A. To Mr. R. W. Wykoff, Vice President and Director of Personnel, Florida East Coast; and Mr. Perry S. Heath, Grand Chief Engineer, Brotherhood of Locomotive Engineers.

Q. When the National Mediation Board terminated its services did it proffer arbitration to the parties? Compulsory arbitration? A. Yes, sir.

Q. Did the Brotherhood of Locomotive Engineers accept that proffer? A. The Brotherhood did accept it.

Q. Did the Florida East Coast Railroad accept it? A. They refused.

Q. Now did the FEC then, after the 30 days had expired, take action in regard to its Section 6 notice? A. Yes.

Q. Did it abrogate the existing contract and put in its proposal? A. Yes.

Q. When did it do that? A. March 12, 1967.

Q. And when did the Brotherhood of [133] Locomotive Engineers go on strike? A. March 12, 1967.

Q. Was that strike action in response to the FEC's changing the contract? A. It was.

Q. Now, were pickets—B. L. E. pickets—established here in the Jacksonville area after March 12? A. Yes, sir.

Q. About when was that? A. March 12.

Q. March 12, all right.

And where were they placed? A. McQuade Street and Stockton Street.

Q. Now where does the Seaboard Railroad interchange its freight with FEC? A. In the Jacksonville Terminal Company property; and I believe it is known as TY or TH.

Q. Anyway, a Yard within the Jacksonville Terminal Company? A. That is correct.

Q. All right. A. It might be known as Honeymoon. I am confused.

[134] Q. They deliver to one Yard and pick up at another? A. That is correct.

Q. Now were they movements of traffic from the Seaboard Railroad to the FEC picketed at Stockton Street? A. Yes, sir.

Q. And all interchange movements between ACL—~~I~~ mean, between Seaboard and FEC cross Stockton Street? A. That is correct.

Q. And were all of those movements picketed? A. Yes, sir.

Q. And what was the response of the employees of the Seaboard? A. The employees of the Seaboard, when they arrived at the picket line, dismounted from the locomotive; and the supervisory personnel of the Seaboard took charge and completed the interchange.

Mr. Towers: Your Honor, at this time I would like to make a Motion to Strike that answer and object to any further testimony along this line.

[135]

The Court: I fail to see the relevance of it. I sustain the objection.

Mr. Milledge: Your Honor, just for the record might I proffer that the same situation occurred at McQuade Street with regard to the Southern traffic?

The Court: Yes, you can make the proffer.

[136] *By Mr. Milledge:*

Q. At McQuade Street, have you had pickets? A. Yes, sir.

Q. And does Southern interchange cross McQuade Street? A. Yes, sir.

Q. And have the regular employees of Southern honored that picket line and refused to make interchange? A. They have.

Q. Now where is interchange made between ACL and FEC? A. Well, FEC comes into Moncrief and leaves their consist in H Yard, what is known as H, in a designated track.

The ACL handles its consist at this time for the FEC to be in the designated interchange track.

Q. Now do you know, sir, the approximate percentage of FEC interchange that comes from ACL and the approximate percentage of interchange that comes from Southern and the approximate percentage that comes from Seaboard through the Jacksonville gateway? [137]

A. Through discussions with management of the ACL Railroad—in particular, Mr. Mervine, Director of Personnel—Mr. Mervine has stated that the ACL delivers approximately 60 percent of all traffic through the Jacksonville gateway; and that the Southern—

Q. That is, to the FEC? A. To FEC.

Ten percent. And the Seaboard Airline, 30 percent.

That was about the ratio.

Q. Now did you cause the FEC Engineers to be placed with signs at the entrance to Moncrief Yard, starting Sunday? A. Yes.

Q. Now prior to that time have you had discussions with Mr. Mervine, the Director of Personnel of the ACL? A. Yes.

Q. Now, what was the purpose of those pickets, or those men, anyway? A. The FEC striking Engineers were instructed to tell, or request, ACL Engineers to refuse to handle solid blocks of FEC traffic from [138] C Yard to B Yard.

Also to refuse to handle FEC traffic from H Yard that was deposited there by the FEC Railroad.

In the name of common cause.

Q. Now did you have a letter prepared? A. Yes, sir.

Q. And was that given to some or most of the ACL Engineers? A. Some, yes, sir.

Q. Did you have any instructions regarding classification—that is, if an ACL train came down from the north and some of it was for the Seaboard and some for FEC, and some for Southern or whatever—some for local deliveries—were the ACL Engineers requested to classify that or not to classify? A. They were requested to classify it.

Q. In regard to such southbound moves or movements, which moves were they requested not to make? A. After it was classified FEC, not to make that move from the classification to B.

Q. To the delivery yard. A. To the delivery yard of FEC. Correct.

[139] Q. They were requested to make all moves except the last one, to the delivery yard? A. That is correct.

Q. Now, as far as northbound traffic was concerned, that was delivered by FEC into H Yard? A. H Yard.

Q. What moves in regard to that were they requested not to make? A. Not to couple into it and handle it.

Q. Now, as far as you know, did the ACL Engineers whose jobs have included either one of those two moves, have they abided by that request? A. As far as I know, yes, sir.

Q. What was the purpose of asking the ACL Engineers—that is, what traffic were you trying to stop by this? A. Only the FEC.

Q. And in your discussions with Mr. Mervine, the Director of Personnel, have you discussed that? A. Yes.

Q. And have you made it clear to him that that was what you had in mind? A. Yes, sir.

Q. Have there been any threats or coercion [140] toward any ACL Engineers? A. No, sir.

Q. In addition to the picket signs and to the letter—that I believe is Exhibit 1 or Exhibit A of the plaintiff—have you talked to the ACL Engineers individually? A. Most of them.

[Argument of Mr. Milledge]

{169}

The Court: You are basing your case solely on the Norris-LaGuardia Act?

Mr. Milledge: Right. I think at this point of the argument, since Norris-LaGuardia is clearly in point here.

UNITED STATES DISTRICT COURT**MIDDLE DISTRICT OF FLORIDA****JACKSONVILLE DIVISION****No. 67-335-Civ-J**

**ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,**

Plaintiff,

—v.—

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS; et al.,**

Defendants.

**Order Denying Application for Temporary
Injunctive Relief**

(Filed April 26, 1967)

This cause came on to be heard on April 25, 1967, upon the plaintiff's application for temporary injunctive relief against defendants. Upon evidence introduced by plaintiff and defendants, and upon arguments by respective counsel, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The plaintiff, Atlantic Coast Line Railroad Company (ACL), is an interstate railroad company, subject to the

Interstate Commerce Act, 49 U.S.C. § 1, et seq., and the Railway Labor Act, 45 U.S.C. § 151, et seq.

2. The defendant, Brotherhood of Locomotive Engineers (BLE), is a labor organization under the Railway Labor Act which represents the craft of locomotive engineers employed on many railroads including the plaintiff, ACL, and the Florida East Coast Railway Company (FEC). The individual defendants are officers or members of BLE.

3. In 1964 FEC issued to BLE a proposal under Section 6 of the Railway Labor Act, 45 U.S.C. § 156, to change the rules, rates of pay and working conditions of FEC engineers. This proposal was processed under the procedures of the Railway Labor Act. In February, 1967, the National Mediation Board proffered arbitration to FEC and to BLE. BLE accepted arbitration of the dispute and FEC declined. The procedures of the Railway Labor Act having been exhausted, on March 13, 1967, FEC unilaterally put into effect the proposed contract revisions for engineers, and BLE called a strike against FEC.

4. At its northern terminus in Jacksonville, Florida, FEC interchanges freight traffic with ACL, Seaboard Air Line Railroad Company and Southern Railroad Company. This interchange is made with Seaboard and Southern upon the premises of the Jacksonville Terminal Company. Interchange between FEC and ACL is performed in the Moncrief Yard facility of ACL. FEC trains operated by striker replacement crews daily enter and operate in this ACL yard for the purpose of delivering and receiving interchange traffic. This interchange traffic averages 420 cars per day or over 150,000 cars per year. The interchange of

freight with ACL constitutes approximately 60% of all freight received and delivered by FEC at its northern terminus.

5. The use of ACL's Moncrief Yard by FEC to receive and deliver freight is an integral and necessary part of FEC's operations.

6. Commencing on Sunday, April 23, 1967, BLE caused pickets to be placed at the employee entrance to Moncrief Yard. These pickets, by signs and pamphlets, requested the ACL employees to refuse to handle interchange traffic to and from FEC. Since the picketing commenced ACL engineers have refused to deliver freight to those tracks in Moncrief Yard designated for delivery to FEC, and have refused to receive freight from those tracks where FEC trains and crews have placed freight for delivery to ACL.

7. The effect of this picketing will be to deprive FEC of freight traffic to and from ACL. In addition, it will cause severe congestion of ACL's Moncrief Yard.

CONCLUSIONS OF LAW

1. This suit arises under the Railway Labor Act, 45 U.S.C. § 151 et seq., and the Interstate Commerce Act, 49 U.S.C. § 1, et seq. This Court has jurisdiction of the case under 28 U.S.C. § 1337.

2. The Interstate Commerce Act regulates the relationships among interstate railroad carriers and between such carriers and the public. The Railway Labor Act regulates the relationships between railroad carriers and railroad employees.

3. The parties to the BLE-FEC "major dispute" having exhausted the procedures of the Railway Labor Act, 45 U.S.C. § 151, et seq., are now free to engage in self-help. *Brotherhood of Locomotive Engineers v. Baltimore & O.R.R.*, 372 U.S. 284 (1963).

4. The conduct of the FEC pickets and that of the responding ACL employees are a part of the FEC-BLE major dispute. *Brotherhood of Locomotive Firemen and Enginemen v. Florida East Coast Ry.*, 346 F. 2d 673 (5th Cir. 1965).

5. The conduct of the ACL employees creates neither a major nor a minor dispute with ACL. See *Chicago & Illinois Midland Ry. v. Brotherhood of R.R. Trainmen*, 315 F. 2d 771, 776 (7th Cir. 1963) (Swygert, J., dissenting).

6. The "economic self-interest" of the picketing union in putting a stop to the interchange services daily performed within the premises of plaintiff's yard facilities, and in the normal, day-to-day operation of FEC trains operating with strike replacement crews within these facilities is present here. The "economic self-interest" of the responding employees in refusing to handle this interchange and in making common cause with the striking FEC engineers is similarly present. *Brotherhood of R.R. Trainmen v. Atlantic Coast Line R.R.*, 362 F. 2d 649 (5th Cir.), *aff'd*, 385 U.S. 20 (1966).

7. The Norris-LaGuardia Act, 29 U.S.C. § 101, and the Clayton Act, 29 U.S.C. § 52, are applicable to the conduct of the defendants here involved. See *Brotherhood of Locomotive Firemen and Enginemen v. Florida East Coast Ry.*,

346 F. 2d 673 (5th Cir. 1965); *Brotherhood of R.R. Trainmen v. Atlantic Coast Line Railroad*, 362 F. 2d 649 (5th Cir.), *aff'd*, 385 U.S. 20 (1966).

Upon consideration, it is

ORDERED that plaintiff's application for temporary injunctive relief is denied.

DONE AND ORDERED at Jacksonville, Florida, this 26th day of April, 1967.

WM. A. McRAE, JR.
Judge

Copies to counsel

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

Case No. 67-338-Civ-J

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood, and G. Q. RUTLAND, individually and as a member of said Brotherhood,

Petitioners,

vs.

**ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,**

Respondent.

Petition for Removal

(Filed April 27, 1967)

*To the Judges of the United States District Court for the
Middle District of Florida:*

The Petition of Petitioners, Brotherhood of Locomotive Engineers; Local Lodge Division 823 of the Brotherhood of Locomotive Engineers; J. E. Eason; J. D. Sims; H. M.

Sawyer; W. K. Morris and G. Q. Rutland, respectfully shows:

1. On the 27th day of April, 1967, an action was commenced against Petitioners in the Circuit Court, in and for the Fourth Judicial Circuit of Florida, styled Atlantic Coast Line Railroad Company, a corporation, Plaintiff, vs. Brotherhood of Locomotive Engineers, et al., Defendants, by service upon Petitioners of a Complaint, a copy of which is attached hereto. True copies of all matters filed in said cause are attached hereto.

2. The above described action is a civil action of which this Court has original jurisdiction under the provisions of 28 USCA, Section 1337, and is one which may be removed to this Court by Petitioner, pursuant to 28 USCA, Section 1441, in that it appears from the Complaint that this is a civil action arising under one or more of the following Acts of Congress regulating Commerce:

Interstate Commerce Act, 49 U.S.C. @ 1 et seq.;
Railway Labor Act, 45 U.S.C. @ 151 et seq.;
and the First Amendment, United States Constitution.

3. Petitioner files herewith a bond with good and sufficient surety conditioned, as provided by Title 28, United States Code, Section 1446(d), that it will pay all costs and disbursements incurred by reason of the removal proceedings hereby brought should it be determined that this action is not removable or is improperly removed.

WHEREFORE, Petitioner prays that the above action now pending against him in the Circuit Court of the Fourth

Judicial Circuit of Florida be removed therefrom to this Court.

RUTLEDGE & MILLEDGE

Attorneys for Petitioner

**601 Flagler Federal Building
Miami, Florida.**

RICHARD L. HORN

Of Counsel

[Jurat omitted in printing]

[Certificate of Service omitted in printing]

Notarized on 10th day of November 1937 at Miami, Florida, before me, the undersigned, a Notary Public for the State of Florida, personally appeared the following persons, to-wit: J. D. Horn, individually and as an official of said Brotherhood, H. M. Sawyer, individually and as a member of said Brotherhood, W. R. Roberts, individually and as a member of said Brotherhood, and G. Q. Hurdman, individually and as a member of said Brotherhood.

Notarized

Motion to Remove Action to State Court

(Filed April 27, 1937)

Plaintiff, Atlantic Coast Line Railroad Company, moves for the entry of an Order remanding this case to the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, from which it was improperly removed, and plaintiff states the following grounds for its motion:

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
No. 67-338-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Plaintiff,

—VS.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood, and G. Q. RUTLAND, individually and as a member of said Brotherhood,

Defendants.

Motion to Remand Action to State Court

(Filed April 27, 1967)

Plaintiff, Atlantic Coast Line Railroad Company, moves for the entry of an Order remanding this action to the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, from which it was improperly removed, and plaintiff states the following grounds for its motion:

1. Removal of this action is improper under 28 U.S.C., Section 1441.

2. Plaintiff's action is not one of which this Court has original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States.

3. Plaintiff's action is not one of which this Court has original jurisdiction under 28 U.S.C., Sections 1331 and 1337, or under any law of the United States regulating trade or commerce.

ROGERS, TOWERS, BAILEY, JONES & GAY

C. D. TOWERS, JR.

1300 Florida Title Building

Jacksonville, Florida 32202

Attorneys for Plaintiff

[Certificate of Service omitted in printing]

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-338-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY,

a corporation,

Plaintiff,

v.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS;
et al.,

*Defendants.***Order**

(Filed April 27, 1967)

After due notice, a hearing was held this day on Plaintiff's Motion to Remand. The Court has considered the arguments of counsel for the respective parties and is of the opinion that this case was improvidently removed to this Court. 1A Moore's Federal Practice Para. 0.167(7) (2nd ed. 1965).

Upon consideration, it is ORDERED that Plaintiff's Motion to Remand is granted and this cause is hereby remanded to the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida; and that a certified copy of this order be mailed by the Clerk of this Court to the Clerk of said Circuit Court.

DONE AND ORDERED at Jacksonville, Florida, this 27th day of April, 1967.

/s/ WM. A. McRAE, JR.

Judge

CIRCUIT COURT OF DUVAL COUNTY, FLORIDA

Civil Action No. 67-3536

Division E

ATLANTIC COAST LINE RAILROAD COMPANY, ETC.,

Plaintiff(s),

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; et al.,

Defendant(s).

Summons

THE STATE OF FLORIDA:

To all and singular the sheriffs of said State:

YOU ARE HEREBY COMMANDED to serve this summons and a copy of the complaint or petition in the above styled cause upon the defendant(s) W. K. Morris, individually and as a member of the Brotherhood of Locomotive Engineers.

Each defendant is hereby required to serve written defenses to said complaint or petition on plaintiff's attorney, whose name and address is Rogers, Towers, Bailey, Jones & Gay, 1300 Florida Title Building, Jacksonville, Florida 32202 within 20 days after service of this summons upon that defendant, exclusive of the day of service, and to file the original of said written defenses with the clerk of said court either before service on plaintiff's attorney or imme-

diately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

Witness my hand and the seal of said Court on May 5, 1967.

S. MORGAN SLAUGHTER
As Clerk of said Court

By: BETTY R. THOMPSON
As Deputy Clerk

[Other summonses omitted in printing]

IN THE
CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

No. 67-3536

Division E

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood, and G. Q. RUTLAND, individually and as a member of said Brotherhood,

Defendants.

Complaint

(Filed April 27, 1967)

Atlantic Coast Line Railroad Company, a corporation, (hereinafter "ACL") as plaintiff, sues Brotherhood of Locomotive Engineers, an unincorporated labor association, (hereinafter "BLE"), individually and as representative of its membership; Local Lodge Division 823 of the BLE for the Florida East Coast Railway Company; J. D.

Sims, individually and as Assistant Grand Chief Engineer of the BLE; J. E. Eason, individually and as Local Chairman of the BLE for the FEC; and H. M. Sawyer, W. K. Morris and G. Q. Rutland, individually and as members, agents and representatives of the BLE and of the Local Lodge of the BLE for the FEC, as defendants, and alleges:

1. Plaintiff is a corporation organized and existing under the laws of the State of Virginia with its principal place of business in Jacksonville, Duval County, Florida, and is authorized and qualified to do business in the State of Florida. Plaintiff is a railroad common carrier subject to the provisions of the Florida Transportation Act, Chapter 350, Florida Statutes, and is engaged in the operation of a railroad system in this state carrying passengers, freight and express lading for hire. Plaintiff, as a common carrier, serves numerous communities within the State of Florida in addition to the City of Jacksonville and County of Duval and provides extensive passenger, mail, freight, including perishable freight, and express lading service to these communities. In the course of its operations, plaintiff serves numerous industries and plants in the State of Florida and supplies and materials vital for their existence. Plaintiff is further obligated under the aforesaid Florida Transportation Act to provide and does provide interchange service with various connecting railroad common carriers, including FEC, Seaboard Air Line Railroad Company and Southern Railway System.

2. Defendant BLE is an unincorporated labor organization with its principal offices in Cleveland, Ohio, but with local lodges located in the State of Florida. Local Lodge Division 823 is the local lodge of BLE for members who are employees of the FEC residing in northeast Florida, and is located in New Smyrna, Florida. Defendant J. D.

Sims currently at all times material hereto has held the national office in the BLE designated as Assistant Grand Chief Engineer whereby he was and is charged with the responsibility of promoting, inducing and coordinating the acts hereinafter alleged. Defendant Sims, individually and in his official capacity as said national officer, did in fact promote, induce, and coordinate the acts hereinafter alleged. Defendant, J. E. Eason, is a resident and citizen of the County of Volusia, State of Florida and is the local chairman for BLE members employed by FEC in the State of Florida and individually and in said official capacity as local chairman has also promoted, induced and coordinated the acts hereinafter alleged and assisted the BLE and defendant Sims in promoting, inducing and coordinating such actions. Defendants H. M. Sawyer, W. K. Morris and G. Q. Rutland, as members, representatives and agents of BLE and Local Lodge Division 823 of the BLE, have picketed, displayed pamphlets and induced plaintiff's employees to cease work as hereinafter alleged. The other members of the BLE and Local Lodge Division 823 are so numerous as to make it impractical to bring them all before the Court individually. None of the individual defendants is an employee of ACL.

3. This action arises under the Constitution and laws of the State of Florida, including without limitation the Declaration of Rights of the Florida Constitution; the Florida Restraint of Trade Laws, Chapter 542, Florida Statutes; the Florida Transportation Act, Chapter 350, Florida Statutes; and the Florida Labor Laws, Chapter 447, Florida Statutes.

4. At all times material hereto there has existed a collective bargaining agreement between ACL and its employees represented by BLE, which agreement is presently

in full force and effect. There is no dispute under said agreement within the meaning of the Railway Labor Act (45 U.S.C., Section 151, et seq.) between the plaintiff and either the members of the BLE or the individual defendants named herein, between the plaintiff and any of its employees or between plaintiff and the employees of any other railroad common carrier which gives rise to the acts herein-after alleged.

5. The FEC is a corporation organized under the laws of the State of Florida and is an intrastate railroad common carrier shipping various goods and commodities in interstate commerce and receiving various goods and commodities from various railroad common carriers, including the ACL. The FEC has been involved in labor disputes with various railroad labor organizations representing the FEC employees since the year 1963. The defendant labor union has been on strike against FEC since March 12, 1967. That strike has not been resolved.

6. On April 24, 1966, certain operating unions, the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brakemen and the Brotherhood of Locomotive Firemen and Enginemen, struck the FEC. On May 4, 1966, these organizations established picket lines at various employee entrances to the Jacksonville Terminal Company, a terminal facility used by ACL, FEC and other railroads servicing northeast Florida. Jacksonville Terminal Company filed suit in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, Division B, Case No. 66-2941-E, praying for injunctive relief against the aforesaid picketing of its employee entrances. A temporary injunction was entered by the Honorable Roger J. Waybright on May 30, 1966, enjoining said picketing and

after receiving oral and documentary evidence and briefs of counsel, a final decree enjoining said picketing was entered on July 29, 1966, and a subsequent Suggestion for Writ of Prohibition to the First District Court of Appeal of Florida was denied. The facts existing in the action filed by Jacksonville Terminal Company are less severe than the facts existing here.

7. ACL has various lines coming into and going out of the City of Jacksonville, Duval County, Florida, including main lines through which service is provided to various destinations north and west of said County and including main lines destined to Tampa, Florida, serving points between Tampa and said County. The property and lines of FEC end at a point just to the north of the St. Johns River and to the south of the Jacksonville Terminal Company, the northeast Florida terminal facility for various user railroads. The rail lines of ACL in Duval County in no way adjoin or are directly connected to the rail lines or property of FEC. FEC does not own any part of the stock of ACL and does not in any way control the operation or management of ACL. ACL operations are in no way integrated into the operations of the FEC and ACL furnishes to FEC no switching, or other interchange service to FEC other than simple transfer of property rights in and responsibility for railroad cars to and from FEC. ACL furnishes no minor repairs or maintenance on FEC cars or locomotives. ACL provides no signaling or switching service for FEC in Moncrief Yard or elsewhere. ACL furnishes to FEC no goods, facilities, or services which are an integral part of the day-to-day operations of FEC.

8. On Sunday, the 23rd day of April, 1967, without notice, the BLE by and through its members, including defendants J. D. Sims, J. E. Eason, H. M. Sawyer, W. K.

Morris and G. Q. Rutland, proceeded to display picket signs and patrol at employee entrances to the property and interchange yard exclusively owned by ACL and known as Moncrief Yard and to disburse letter-notices or pamphlets to ACL employees going to work through said entrances. A sample of said letter-notices is attached hereto as Exhibit A. The express and manifest intent of the BLE in distributing the aforesaid notices and in displaying said picket signs was to induce and coerce the employees of ACL in Moncrief Yard to refuse to handle, move or carry out their regularly assigned duties with respect to any ACL railroad car arriving in Moncrief Yard from the FEC or arriving in Moncrief Yard destined to the FEC. Defendants also sought and now seek to induce and coerce plaintiff to combine with them to embargo or refuse interchange with the FEC in violation of Florida law. The intent and purpose of this picketing and distribution of letter-notices was not to advertise or lawfully advise either the public in general or the employees of the ACL of the BLE labor dispute with FEC but, rather, was to accomplish various purposes hereinafter alleged which are in violation of the law of the State of Florida.

9. As a direct result of the inducement and coercion by the BLE through picketing of the aforesaid employee entrances and through the distribution of the aforesaid pamphlets, employees of ACL in Moncrief Yard have refused to handle, move or interchange any ACL railroad car on ACL property arriving from or destined to the FEC which has had and threatens to continue to have the following results:

- (a) Total disruption of the interchange operations of ACL in Moncrief Yard which are necessary for operation of plaintiff's business;

(b) Effective blockade of railroad cars destined to points within the County of Duval and throughout the State of Florida and the United States;

(c) Stoppage of cars carrying citrus and other perishable goods, United States mail, military traffic, express lading, and other strategic materials;

(d) Inability to serve properly shippers within and without the County of Duval due to the necessity of using supervisory personnel from other points on ACL to operate Moncrief Yard and due to interference with traffic patterns and schedules; inability to comply with the terms of existing contracts for the shipment of goods, commodities and other freight;

(e) Complete disruption of interchange of freight between ACL and other connecting railroad common carriers, including Jacksonville Terminal Company, Seaboard Air Line Railroad Company, Southern Railway System and FEC;

(f) Substantial loss of profits and revenues by diversion of traffic and loss of traffic to other railroads by shippers within and without the County of Duval to a degree which cannot now be determined but which will be determinable in the future, and which threatens job standards and job security of ACL employees.

10. The object and purpose of the aforesaid picketing and distribution of pamphlets by defendants was and is as follows:

(a) Induce and coerce ACL and the employees of ACL to violate the law of the State of Florida by refusing to provide interchange service to the FEC;

(b) Induce and coerce the ACL through its employees to place an illegal embargo on traffic arriving from or destined to the FEC;

(c) Induce and coerce the ACL to engage with defendant BLE in a combination for the purpose of restricting the pursuit of business by FEC and preventing competition in the transportation of merchandise, produce and commodities by the FEC;

(d) Divert rail traffic from the FEC to other railroad common carriers and apply illegal economic pressure and coercion on the ACL.

11. The aforesaid picketing and distribution of pamphlets by the defendants in the absence of any labor dispute between ACL and its employees is illegal under the law of the State of Florida and is designed to accomplish illegal purposes in that:

(a) The defendants' acts constitute coercive pressure on the ACL and its employees which is unlawful and contrary to the established public policy of the State of Florida;

(b) The picketing is outside the area of the struck industry, the FEC, in violation of the aforesaid Florida Labor Law and is in the nature of an illegal secondary boycott;

(c) The defendants seek to force plaintiff to violate its statutory duty under the aforesaid Florida Transportation Act to provide service to its various shippers and to provide interchange service to the FEC and to embargo FEC not only in violation of the Florida Transportation Act but also in violation of the aforesaid Florida Restraint of Trade Laws;

(d) The inducements and coercions of defendants constitute a tortious interference with the contractual relationship between ACL and its employees and between ACL and its various shippers;

(e) Said inducements and coercions of defendants constitute an unwarranted and unconstitutional interference with the business of the ACL and constitute a tortious interference with the prospective business advantage of the ACL;

(f) Said actions of defendants constitute a breach of the peace;

(g) Said actions are for the purpose of restraining trade in violation of Florida law.

(h) Said actions will deprive plaintiff of its property without due process of law in violation of the Constitution and laws of the State of Florida.

12. This court has jurisdiction of the subject matter and of the parties and is the only forum that can grant relief to plaintiff. Plaintiff is without an adequate remedy at law. Unless the picketing and distribution of pamphlets by defendants is restrained and enjoined by this court, plaintiff will suffer irreparable harm and numerous individuals and industries which are like ACL, an innocent third-party to the FEC-BLE labor dispute, will likewise suffer irreparable harm. Far greater injury will be inflicted upon the citizens of Duval County and the entire State of Florida, the employees of ACL and upon ACL by denial of the relief sought herein than will result to the defendants by granting such relief.

WHEREFORE, plaintiff respectfully prays:

A. That this court issue a preliminary injunction made permanent on final hearing pending hearing and determination of plaintiff's application for permanent injunction on the grounds that immediate and irreparable damage will result before notice can be served and a hearing had on said application for permanent injunction.

B. That the preliminary injunction and permanent injunction enjoin and restrain the defendants BLE and Local Lodge Division 823 of the BLE, individually and through their officers, agents, servants, employees, representatives, members, attorneys and all other persons acting at the direction of or in active concert or participation with them, the individual defendants J. D. Sims, H. M. Sawyer, W. K. Morris and G. Q. Rutland, and all persons receiving notice of any such orders of this court from:

(1) Ordering, directing, authorizing, recommending, sanctioning, starting, continuing, permitting, encouraging, or participating in the picketing, patrolling or blockading of the premises or railroad trackage of the plaintiff including entrances to plaintiff's property used by employees of plaintiff, or the interference with or interruption of and of the railroad trackage of plaintiff, or the interference with or interruption of and of the rail traffic movements of the plaintiff;

(2) Causing, compelling or inducing the employees of the plaintiff to cease or temporarily desist from the full performance of their duties with the plaintiff;

(3) Interfering with employees of the plaintiff in the full performance of their respective duties or work with the plaintiff by the imposition of fines against said employees, or otherwise, or by paying any benefit

and giving any money or any thing of value, or of making any promises or inducement whatsoever to any employee of the plaintiff who refuses to obey a lawful order or orders to perform services, duties, or work for the plaintiff in connection with his normal and usual employment with the plaintiff, or supporting in any way any employee of the plaintiff who refuses to obey a lawful order or request by the plaintiff to perform such work, duty or service;

(4) Interfering with the operations of the plaintiff or with the employees, agents and servants of the plaintiff by any of the above described acts or by any force, intimidation, violence or threat thereof.

Plaintiff further prays:

(5) That the defendant labor organizations, their appropriate officers, agents, servants and employees and the other defendants herein be directed and mandatorily enjoined to withdraw and countermand any order, directive, recommendation, request or other advice, heretofore issued by any of defendants' officers, agents, attorneys, or members, asking any of plaintiff's employees not to render service in connection with the operation of the plaintiff.

(6) That plaintiff be granted such other and further relief as the case may require and as the Court shall deem proper.

C. That a day certain be fixed upon which defendants are required to show cause, if any they have, why they should not be permanently enjoined from committing the acts hereinabove complained of.

D. That a copy of this complaint and the temporary injunction herein prayed for be served on the defendants in person.

E. That upon a final hearing of this cause the defendants be permanently enjoined from committing the acts hereinabove complained of.

F. That the plaintiff have such other or further relief as to this court may seem proper and just.

ROGERS, TOWERS, BAILEY, JONES & GAY

by /s/ C. D. TOWERS JR.
1300 Florida Title Building
Jacksonville, Florida 32202
Attorneys for Plaintiff

[Verified by L. T. Andrews, General Manager of
plaintiff corporation, on April 27, 1967.]

EXHIBIT A ANNEXED TO COMPLAINT

(Letterhead of Brotherhood of Locomotive Engineers,
Cleveland, Ohio 44114)

April 23, 1967

To All ACL Employees
Jacksonville, Florida

Dear Sirs and Brothers:

The FEC's striking engineers are clearly engaged in a major dispute (under the Railway Labor Act) against the FEC, we have the right to appeal to the employees of the ACL for help, to make common cause with us by refusing to handle FEC freight.

The FEC and its SCABS with the assistance rendered by the ACL are causing our engineers to suffer loss of all contract rights. We appeal to you to make common cause with us in this fight for our jobs. No freight from ACL means no money for FEC and its SCABS. **HELP US.**

Yours fraternally,

/s/ J. D. Sims

J. D. Sims

Assistant Grand Chief Engineer

Brotherhood of Locomotive Engineers

**Extracts from Transcript of Proceedings before
Honorable Charles A. Luckie, Circuit Judge**

**IN THE
CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA
DIVISION E
Civil Action Case No. 67-3536**

**ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,**

Plaintiff,

VS.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, etc., et al.,

Defendants.

TESTIMONY AND PROCEEDINGS before the Honorable Charles A. Luckie, Circuit Judge, in Chambers, at the Duval County Courthouse, Jacksonville, Florida, on Monday, May 1, 1967, as recorded by Harris S. Coffee, Special Assistant Official Court Reporter:

Appearances:

DAVID M. FOSTER, Esquire, FRANK X. FRIEDMANN, JR., Esquire, ROBERT S. SMITH, Esquire, and C. D. TOWERS, JR., Esquire, of the law firm of Rogers, Towers, Bailey, Jones & Gay, attorneys for plaintiff.

ALLAN MILLEDGE, Esquire, of the law firm of Milledge & Horn, attorneys for defendants.

[2]

PROCEEDINGS

MARSHALL C. JENNETTE, having been produced and first duly sworn as a witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Foster:

Q. State your name, Mr. Jennette. A. Marshall C. Jennette.

Q. Your business or profession, please? A. I am general superintendent of terminals for Atlantic Coast Line Railroad.

Q. Are you employed in any connection, Mr. Jennette, with respect to the operation of Moncrief Yard here in Duval County? A. Yes, sir.

Q. Is that an Atlantic Coast Line Company facility? A. Yes, sir. It's our classification yard in Jacksonville.

Q. Now, Mr. Jennette, did picketing and related activity occur at Moncrief Yard? A. Yes, sir.

Q. And had there been any picketing at Moncrief Yard prior to Sunday, April 23? [3] A. Well, they had been picketing at the south end, McQuade Street only.

Q. Was there any picketing at any of the entrances prior to Sunday, April 23rd? A. No, sir, there were not.

Q. Prior to that time were the operations of the yard going along smoothly? A. Yes, sir; everything was normal.

Q. Were employees performing all of their duties prior to April the 23rd? A. Yes, sir, they were.

Q. Now, if you will, Mr. Jennette, tell the Court when the picketing and related activities began. A. I got a call about 3:00 o'clock Sunday afternoon, April the 23rd that some East Coast engineers were at the entrance to the road

leading into Moncrief Yard displaying some signs and I immediately went out there, got there a little after 3:00 and I understood the signs were put up and the people came in around 2:15 Sunday afternoon, the 23rd.

Q. Were there some picketing signs when you arrived that Sunday afternoon? A. Yes. There were three or four signs being displayed and there were six men there from the Florida East Coast Railroad.

[5] A. Well, I asked the gentlemen if they'd mind if I wrote down what was on the signs. They turned one around face to me, two feet wide, three feet tall. The top of the sign had large letters with the word "Unfair" on it in red, approximately six-inch-high letters. The other letters were in black a little smaller. It said "ACL is helping the FEC scabs destroy our jobs. Do not handle FEC freight," and these signs didn't have any signature of any type on them as to who they represented.

[6] *By Mr. Foster:*

Q. Now, Mr. Jennette, in addition to the signs which you have just described, was any other activity going on there at the employee entrance to Moncrief Yard when you arrived on Sunday afternoon? A. Right many of the cars stopped, and when the cars stopped these gentlemen would go over, ask them—hold up the signs where they could read it. They had a piece of paper, letter they offered some of them to read. Some of them took it and read it and some didn't.

Q. Did Mr. Sims show you a copy of what the letter was and piece of paper? A. I asked about Mr. Sims. They said he had gone, been there 3:00 o'clock, and I went back, I think I got there sometime after 5:00 o'clock and I asked

him if I might—I don't believe—let's see. I don't believe Mr. Sims got there until maybe 10:00 o'clock that night.

Q. Some time that day did Mr. Sims— A. Later on I said to these gentlemen around 5:00 o'clock after all the switch crews had gone to work, it seems these were the ones they wanted to stop and they dispersed and left sometime after 5:00 o'clock and I believe that Mr. Sims was out there and I asked if I might have a copy of the letter they were handing out. He said, "I don't see any reason you shouldn't have a copy," so he gave [7] me a copy.

Q. Let me ask you to look at this piece of paper, Mr. Jennette. Tell me whether that is a copy of the letter Mr. Sims showed to you that the pickets were showing to the ACL employees as they were coming into the yard. A. The copy he gave me was a mimeographed copy on Brotherhood of Locomotive Engineers stationery, and this appears to be a Xeroxed copy of the same letter.

Mr. Foster: We will ask that that be admitted as Plaintiff's Exhibit 3.

Mr. Milledge: No objection.

The Court: Received as Plaintiff's 3.

(The instrument last above referred to was received in evidence as Plaintiff's Exhibit No. 3.)

By Mr. Foster:

Q. Now, Mr. Jennette, would you describe for me, please, the street or roadway where these activities were going on insofar as their proximity to Moncrief Yard is concerned?

A. Well, as you go out McDuff Avenue it makes a turn near the dog tracks and runs into Fifth Street. That is the end of McDuff and the beginning of Fifth and right at that curve there's this unnamed road leading into Mon-

crief Yard and this picketing was taking place two or [8] three hundred feet off of—down this road off of McDuff and approximately a hundred feet before you reach the southern railroad track.

Q. Now, Mr. Jennette, do the vast majority of ACL employees who work at Moncrief Yard enter Moncrief Yard along this road? A. This is the only road entrance to Moncrief Yard.

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[9]

Q. After this picketing and handing out of the letter occurred, was there any change in the manner in which the employees of Moncrief Yard went about carrying out their duties? A. There definitely was.

Q. How would you characterize the change? A. The first incident happened right after [10] midnight Sunday night. One of the engineers stated he didn't want to switch any cars. After we talked to him he went ahead and worked his tour of duty Sunday night. Monday night the same engineer, Mr. R. J. Starling, on Job 17, he went on duty 11:30 P.M. the 24th, and 12:04 A.M. he got off his engine with his handbag. I went out to see why the engine had stopped and we called to him to stop, which he did, and he said he had worked the night before and he wasn't going to handle any FEC cars and, of course, they were stopped all over the yard, and so he walked off the job, and we told him if he walked off he'd be relieved.

Q. All right, sir. Were there any other instances after Mr. Starling during last week in which employees of ACL refused to perform some of their duties at Moncrief Yard? A. In many ways. We called a Mr. M. L. Adams to work Mr. Starling's job after he refused to work. Mr. Adams accepted the call and came to the yard office, and before

he got to the yard office he had a call to call Mr. Shirley, his local chairman.

When he got there he went to use the telephone. When he came out he said he couldn't switch any cars. He left the property without ever getting on the engine or reporting on the job.

[11] Q. All right, sir. Could you tell me how many different train crews or parts of train crews there would be only one man in the particular crew who would refuse to work, who did refuse to do some of their duties there at Moncrief Yard beginning last week beginning with Mr. Starling right on down through Friday? A. It involved 15 switch crews, one road crew and a total of 32 men.

Q. Were these men employed in various crafts? A. They were employed all in the Transportation Department.

Q. What crafts were they members of? A. Engineers, conductors, firemen and switchmen.

Q. Engineers, conductors, firemen and switchmen? A. That's right.

Q. 32 men altogether? A. Yes, sir.

[13]

Q. Mr. Jennette, if you will continue, and if you need to use these notes, you may do so, beginning with Engineer Brown at 11:00 P.M. on April the 25th, I believe it was or 24th, who refused to work. Go on down and tell the Court the names of the individuals involved and the times that the incidents occurred wherein ACL employees refused to work. A. Well, on Job Number 46, Engineer C. E. Brown on duty at 11:00 P.M. on the 24th came into the office where I was and Mr. Brown was right ahead of him—along with his conductor and his two switchmen and stated that he could no longer switch cars on the yard involving—

[14] Q. Mr. Jennette, just confine yourself to the kind of work they refused to do, who they were and when it happened, without getting into what they said. Do you understand? A. Well, Mr. Brown refused to handle cars that were destined to FEC or coming from FEC and Mr. Wright told him—I told him I'd have to relieve him. You want me to go any further than that?

Q. That's fine. Go to Mr. Black. A. Job 23, on duty at 11:30 P.M. on the 24th; refused to switch cars from C Yard to B Yard.

Now, this is where the cars after they are classified, placed in B Yard for FEC crews to pick up which completes the interchange.

Q. That was Engineer Black? A. Engineer Black.

Q. All right, sir. What was the next incident? A. Job Number 14 on the 25th.

Q. That is the 25th of April? A. The 25th of April, on duty 7:30 A.M.

Q. Who was on duty at that time? A. I was, along with Mr. Wright.

Q. Who refused to work? A. Mr. Black refused to.

Q. We are through with Mr. Black. Let's move on. [15] A. His fireman, J. R. Matthews got off the engine at the time Mr. Baker got off.

Q. What job did Mr. Baker hold? A. Engineer to that switch engine.

Q. When did that occur? A. He was relieved at 7:55 A.M. on the 25th.

Q. What kind of work did those men refuse to do? A. Well, he just refused to handle any cars on the yard, cars to or from Florida East Coast Railroad.

Q. What was the next incident? A. Job Number 24 on the 25th, Engineer Griffin. He called in, asked to be re-

lieved stating that he could not handle any cars to or from Florida East Coast Railroad. He was relieved at 4:10 P.M.

Q. Tell me about the next incident. A. Job Number 40 on the 25th. Engineer Rogers called for relief at 4:13 P.M.

Q. How about the next one? A. Job Number 17, E. L. Swan, engineer on duty 11:30 P.M. on the 25th.

Q. What kind of work did that man refuse to do? A. He refused to switch cars that were delivered to ACL by the Florida East Coast Railroad.

Q. What about the next? A. Job 23 on the 26th, Engineer W. T. Lott [16] refused to move cars from 17-C Yard down to B Yard and was relieved at 5:35 A.M. on the 26th.

Q. What about the next one? A. Job 16, Engineer J. M. Kennard. He refused to couple up to a cut of cars, couple up to the Atlantic Coast Line cars from the FEC, and he was relieved at 10:45 A.M.

Q. What type of cars were they? A. A solid cut of cars from the Florida East Coast Railroad to the Atlantic Coast Line Railroad.

Q. Consisting of what? A. Consisting of loads and empties of various types of commodities.

Q. Do you know what was in the cars? A. No, I don't have a consist of the cars.

Q. All right, sir. How about the next incident? A. Job Number 24 on the 26th, Mr. R. F. Wynn on duty 3:30 P.M. refused to switch perishable cars from the Florida East Coast Railroad and was relieved at 4:30 P.M.

Q. How about the next incident? A. Job Number 16, J. H. Stalvey, on duty 11:50 P.M. on the 26th refused to switch FEC cars, was relieved at 4:45 P.M. on that same date.

Job Number 6, Conductor J. R. Cannon—and this is the first instance where the whole crew came out.

[17] Q. Who were the other members of the crew Mr. Cannon was on? A. Mr. Cannon was the conductor and the switchmen were A. W. Roundtree and Switchman L. Carter.

Q. Who was the engineer to that particular crew? A. The engineer, road foreman-engineer was supervisory put on the engine because we didn't have any engineers to report for the job and the extra board had been depleted.

Q. Did those men refuse to work? A. They refused to move cars from Track C-12, that is in C Yard down to B Yard for the Florida East Coast and they were relieved at 1:00 A.M.

Q. What is the next incident, sir? A. Job Number 6. That is the same job, though. Engineer Shanks was the engineer to that same crew—excuse me. I was wrong about that being a supervisor. We had an instance of that kind. That was later on, but this was his full crew where the engineer and all the trainmen refused to handle all these cars and the engineer on that job was M. H. Shanks.

Q. What is the next—that is the next incident, Job Number 23? A. 23 on the 27th. Conductor R. P. Walker, Switchman Brown, Switchman Epps refused to handle cars from [18] C-17 to B Yard to be delivered for the Florida East Coast Railroad.

Q. All right, sir. What is the next incident? A. Job Number 12 on the 27th. Conductor O. G. Green on duty at 11:30 P.M. refused to switch cars which were left on the—what we refer to as the 20 lead to be switched. When he got down to the three cars that come over from the Florida East Coast Railroad, then he refused to couple to them and he stood aside and the supervisory crew moved those three cars and they worked on until 5:00 A.M. when they refused to switch cars on a train that came in from the north that had some Florida East Coast cars near the cab.

They refused to go in and start switching on this train, and the other members of the crew were C. R. Bunch and C. F. Bell, and they were relieved at 5:00 A.M.

Q. What day was that? A. That was on the 4th and the 27th. They went on to the 28th. They were relieved on the 28th.

Q. That was Friday morning? A. Yes, sir.

Q. The train they refused to switch, did it contain partly cars destined to the FEC and partly cars destined to other railroads? A. Yes, sir. I think there was a total of nine cars that came in, a few on the head end and a few on the [19] rear which they refused to handle, and the next incident catches the head end of this same train. Job 45, T. E. Hunton, Conductor, Switchman A. L. Oates, Switchman W. H. Matthews and Engineer J. R. Ford on duty at 11:30 P.M. on the 27th refused to switch the head end of 175. They were relieved at 5:25 A.M. on the 28th.

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Cross Examination by Mr. Milledge:

Q. Now, Mr. Jennette, you were out at the place [20] where the men were carrying signs at the employees' entrance to Moncrief on a number of occasions; were you not?

A. Yes, sir, I was.

Q. Now, those men that were carrying signs did identify themselves as being FEC employees who were on strike to you; did they not, sir? A. Yes.

Q. And they also identified themselves as being engineers? A. Yes, sir.

Q. All right. Now, they had conversations, did they not, with a large majority of the employees coming into Moncrief Yard? A. Yes, sir. They talked to a lot of people.

Q. Now, you overheard some of those conversations?

A. No, I couldn't say I overheard any of them. I stood over back out to one side.

Q. They were not asking the employees not to cross the picket line? In other words, they were actually asking them to go in, but not to do some of their work when they got inside? A. That was my understanding. They were urging the employees to go to work but refuse to handle FEC cars.

Q. Now, there weren't any employees that came up to the picket line and then turned around and went home? [21] They all went in and if they got relieved, they got relieved once they were inside the yard? A. That's my understanding; yes, sir.

Q. All right, and you understood that what they were asking of the employees was that they make the words "common cause" were words that were used or bandied about, anyway that was the word used, wasn't it? A. That was the words used in Mr. Sims' letter.

Q. All right. Now, was there anything out there other than—at the employees' entrance other than peaceful conduct? A. It was all peaceful that I saw.

Q. Now, all of your employees who refused to do work, refused to handle cars to or from FEC; is that correct? I mean when they refused it was because— A. That's right.

Q. —because of FEC traffic? A. That's right.

Q. Now, how many men do you have operating crews, that is engineers, firemen, switchmen and conductors of yard crews in Moncrief Yard? About how many men do you have on? A. Well, I know we have got 40 assignments in the Jacksonville area which includes the industrial area on the east side of town and there's four men—at least [22] four men to a crew and five on a few of them, so it would be between a hundred and sixty and a hundred and seventy-five men at least involved in those assignments.

Q. All right, sir. Now, many of the jobs don't have—don't deal with FEC work; isn't that true? A. Well, quite a few of them do not. Some cars handled over at export by our crews, which is an industrial switching area, and there may or may not be a car in there for Florida East Coast.

Q. Now, how many different men, if you might be able to tell me, refused to handle FEC traffic? A. Well, this was a total of 27 in this list and we had a road crew—right after, some time around 8:00 o'clock; soon after 8:00 o'clock on Friday morning that refused to pull a train out going to Waycross that had some FEC traffic in it, so that would be a total of 32 men.

Q. Now, did you for some of the men out there, did you just relieve them temporarily, just long enough to have a supervisor, supervisory crew couple up or uncouple and move the FEC traffic and then put the regular crew, let them handle the rest of their work? A. There was one instance on the morning of the 28th. A Conductor Green refused to handle some FEC cars and at that time he stood aside and the general yard master—the engine was already manned by the supervisory foreman [23] of the engines and they moved three cars off of this—we refer to it as 20 lead, and they went back to work and switched off. 5:00 o'clock that morning when the in-bound train came in and they refused to classify it.

Q. Now, the men you just talked about, or this man Green was doing his work until he came to an FEC movement and then he refused to do that. That was the first one and you used a supervisor and then he continued to do the rest of his work up until the point he ran into some more FEC traffic? A. That's right.

Q. Now, at that point did you use a supervisor to switch the FEC traffic out of the train that had come in from

Waycross? A. Well, after he was relieved at 5:00 A.M. we used supervisors to switch that train; yes, sir.

Q. But at 5:00 A.M. did you take supervisors and just pull the FEC cars out of the road—train, and let him go back to doing the rest of the train or did you just relieve him? A. No. He was relieved and he left the train. Now, that train was mixed up for quite a few cars in the rear. There were none of them, you might say, adjacent to each other.

Q. Now, all of this activity that we have been [24] talking about as far as your employees refusing to handle FEC traffic occurred in Moncrief Yard; did it not? A. Yes, sir.

Q. And that is a yard owned by ACL? A. (Nods head.)

Q. Did any employees other than ACL work in that yard? A. No, sir. The Weighing and Inspection Bureau had one man assigned out there, but all the other employees are ACL.

Q. Are there FEC employees that run trains in that yard, run engines in Moncrief Yard? A. They make deliveries.

Q. Do they run engines? A. They have to to make deliveries.

Q. There are other employees that work there; I mean there are FEC employees that work— A. I didn't understand. I'm sorry. I didn't understand the question. Southern Railroad, Seaboard and FEC employees come into Moncrief Yard to make delivery of cars and FEC employees also pick up in Moncrief Yard, that the other two railroads do not.

Q. Now, where do the FEC engines—let's talk a minute about interchange with FEC. What do we mean by the term interchange? [25] A. Well, interchange is a time when one railroad delivers cars to another railroad along with the documents that accompany the car and one railroad

releases them and another railroad picks them up and takes full possession of them.

Q. Now, as far as deliveries, let's talk about southbound. I think that is easier when traffic is moving southbound and it's going from ACL to FEC.

Where is that interchange of traffic made? A. It is made just north of McQuade Street in what is known at Moncrief as B Yard.

Q. That is made in Moncrief Yard; is that correct? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Now, your railroad has designated interchange tracks in its B Yard for delivery of cars to FEC? A. That is true.

Q. And normally your crews put these cuts of cars into B Yard; right? A. Yes, sir.

Q. And FEC engines come onto your property in Moncrief Yard and pick them up? A. Yes, sir.

[26] Q. Now, how about northbound traffic from FEC to ACL? Where is the interchange made of that? A. The interchange there is made in what is known as H Yard which is parallel to B Yard and C Yard.

Q. That is on your property also? A. That is at Moncrief, also on our property.

Q. Now, when FEC engines come on, do FEC engines and—with their cars come into your yard, H Yard? A. They do; yes, sir.

Q. What do the engines and crews do? A. They deliver the waybills or documents accompanying the car and they either go back to Bowden as light engines or pick up cars at B Yard and leave Moncrief.

Q. All right. You said Bowden. What is Bowden? A. Bowden Yard is the Florida East Coast classification yard

on the north end of their railroad and on the south side of the St. Johns River.

Q. Do your engines and crews go down to Bowden Yard?

A. No, sir, they do not.

Q. Do your engines and crews ever go on FEC property at all? A. Not to my knowledge.

Q. They don't go south of the St. Johns River? A. They might touch the FEC right of way where [27] they switch—the newspaper building over here, they switch trains out very close to the north end of the Florida East Coast south-bound main line.

Q. Now, if FEC engines were not allowed to come into your yard to either deliver or receive traffic, that would effectively end the interchange of traffic between FEC and ACL; would it not?

Mr. Foster: Read that back, please.

(The last question was read by the reporter.)

A. There's a lot of things involved there. I don't think I am prepared to answer that question, because there is a lot of obligations which the Coast Line—

Q. I am not talking about—if there was some kind of a physical barrier that kept them from going onto your property, that would end the interchange; I mean, that would end the flow of traffic to and from? A. Well, it stands to reason if you close the gate nothing can get out or get in. I don't know if that is what you mean or not.

Q. Now, while this activity was going on of your employees refusing to handle FEC traffic, did you rearrange any of the switching road jobs in Moncrief Yard? A. No, sir, not to my knowledge.

Q. Didn't you have your—strike that.

Normally your switching crews make up a train [28] and then a road crew, say, on the northbound movement, then your road crew comes on and moves it out north; isn't that the way you usually have done it? A. The yard crew makes up the train and the road crew puts their engine on and couples up and departs.

Q. Now, normally when FEC delivers cars into H Yard, those cars are normally moved up to C Yard and put into a train for northbound movement? A. Either C or H. Might be parked in C Yard.

Might depart strictly from H. Most trains do. C is an in-bound yard.

Q. Didn't you in the last day or two when there was an FEC cut in H Yard and your crews wouldn't move it, didn't you just put a caboose on the back of it and then have your road crews back down and double over and couple onto that cut of cars that was already standing in H Yard?

A. A solid cut of Florida East Coast cars?

Q. Just put a caboose on it and couple up to it? A. No, sir.

Q. You didn't do that? A. No, sir.

Q. When you make up the train when you go north to Waycross and when your road crew comes out there, does your road crew just have to pull straight out or do they have to pull out and back in and couple onto another cut [29] and pull out and back in again and couple onto some more? A. Quite a few times they have done what is referred to as doubling out when you pick up cars on more than one track, and most trains have sufficient length that they do double back on more than one track, some of the piggyback trains.

Q. How long is the yard from one end to the other? A. Well, it's—including B Yard all the way to the north end of C Yard it's just under two miles long, I'd say.

Q. Now, this yard runs from McQuade Street all the way up to Kings Road? A. Yes, sir.

Q. And that is the distance you are talking about as two miles? A. Yes, sir, close to two miles.

Q. Now, how long are your trains that run to Waycross? A. How long?

Q. Uh-huh. A. I really couldn't say, probably anywhere from 75 to 150 cars. It would depend on what the train is, whether it is—we run various types of trains.

Q. Now, how many cars to the mile? [30] A. Well, we have so many of these long piggyback cars, it's really hard nowadays to say.

Q. Say— A. In other words, the length of a train, because they are mixed so bad. I'd have to do some figuring before I could testify to that.

Q. Well, your shortest cars are around— A. Shortest cars are 40 feet, boxes, and the longest ones 80—around 89 foot, piggyback cars.

Q. Well, now, on some of these trains, Mr. Jennette, when you take them out you double them over and they reach all the way back, reach all the way back down into H Yard? A. Well, if they are doubling out of H Yard, we pick up two tracks out of H Yard. If we are doubling out of C Yard, we double up and pick up out of two tracks in C Yard.

Q. Now, when these FEC engines come into your yard, over what part of the yard do they run? A. Well, they come in H Yard, depending on whether it is a long cut or a short cut—if it is a long cut of cars it probably comes in Tracks, say 3, 4, 5, which is alongside of the yard. If they are short, they might come in on Tracks 9, 10, 11 or 12 and they would cut loose their cars, they would deliver the documents at the [31] yard office and then immediately go back

to the south end of the yard for whatever instructions or assignments they have from their Bowden Yard supervisor.

Q. Where is the—is the yard office the farthest they come? A. Yes, sir.

Q. They come in over McQuade Street and they work in H Yard; that is they uncouple or place the cars there and then they come up to the yard office? A. Yes, sir.

Q. And about how far is it from McQuade Street up to the yard office? A. It's about, somewhere close to a mile and a half.

Q. So it's about—the yard office is about half a mile or a little over from the north end of the yard and about a mile and a half or a little less from the south end? A. That's—they are approximate distances.

Q. All right. Mr. Jennette, do the FEC crews sometimes switch out damaged cars? In other words, if they delivered a cut of cars and there happens to be a damaged car in there, do they sometimes switch those out? A. Over at B Yard?

Q. Um-hum. [32] A. As far as I know we don't deliver any damaged cars to them. We inspect them before they are delivered.

Q. Mr. Jennette, does ACL operate in states other than Florida? A. Yes.

Q. And in what states does it operate? A. Georgia, South Carolina, North Carolina, Virginia, Alabama.

Q. And how far north does the ACL system run? A. Richmond, Virginia.

Q. And how far up into the northwest or how far [33] west does the system go? A. Birmingham.

Q. Now, these cars that FEC delivers for northbound shipment into Moncrief Yard, for the most part are these

destined to be moved out of the State of Florida? A. Well, I tell you, a large percentage of them are; yes, sir.

Q. Now, this traffic that is coming southbound for delivery to FEC, that comes in from Waycross down here to Jacksonville? A. It either comes through Savannah or Waycross.

Q. And in those areas, Savannah and Waycross, it is received from all over your system? A. That is true, and even off the system.

Q. Now, do you know why it was that the—these different men were relieved and sent home rather than just taken off the engine temporarily while a move for FEC was made by supervisors? Do you know what the management decision was on that? A. It was the management decision to relieve them.

Q. Prior to this activity taking place, that is the men refusing to handle FEC traffic, had you received instructions that if these men refused that they were not to be fired, but simply relieved? A. Was that my understanding of my instructions?

[34] Q. Yes. A. Yes, sir.

Q. Now, since the truce, there was a truce in this activity; was there not, commencing I believe it was sometime, oh, the latter part of Friday morning, some time Friday the men resumed managing FEC traffic temporarily; is that correct? A. I heard about it late Friday afternoon. I don't know just when it took place.

Mr. Foster: If you would care to do this, we are prepared to stipulate that the picketing and other activity did cease on Friday and since that time the employees of ACL have carried out all of their duties and continued to do so.

Mr. Milledge: All right.

By Mr. Milledge:

Q. And these employees who continued to handle FEC traffic are back to work? A. They are all marked up, and my understanding is they are back to work.

Q. All right, sir. Now, you had conversations not only with the men carrying the signs but also with me; did you not, out there? A. Yes, sir.

[35] Q. And you had some conversations, I believe, with other different union people or at least they were there, like Mr. Sims? A. I talked to you and Mr. Sims.

Q. You understood, did you not, that the purpose of this activity was only to stop FEC traffic? A. That was my understanding; yes, sir.

Q. Does ACL have collective bargaining contracts with the engineers and with the other operating personnel? A. I am sure we do. We have someone here who is more capable of testifying to that than I am.

Q. Mr. Jennette, as you understand it, there is some dispute or has been some dispute as to whether or not your employees have a right to refuse to handle FEC traffic; is that not correct? A. I am not prepared to answer that.

Mr. Milledge: That is all I have.

Redirect Examination by Mr. Foster:

Q. Mr. Jennette, did the picketing and displaying of this letter that has been identified as Plaintiff's Exhibit 3 continue through the time that the truce was reached on Friday? A. Yes, sir.

[36] Q. And since the picketing and other activity at the entranceway have ceased, have all ACL employees performed all of their duties at Moncrief Yard? A. Yes, sir.

Q. Now, do any FEC employees report to work at Moncrief Yard as distinguished from running engines into—
A. No, they do not report to work there.

Q. You referred to B Yard, C Yard and H Yard. Do those letters merely designate tracks which form part of the whole Moncrief system and do all of the tracks form one integral part of the yard? A. All one yard; yes, sir.

Q. The refusing to work you testified about this morning, did all of the refusing to work happen on or in Moncrief Yard? A. Yes, sir.

Q. Does all interchange that occurs between FEC and ACL take place in Moncrief Yard in Jacksonville, Florida? A. Yes, sir, it does.

Q. In respect to H Yard, do any carriers besides from FEC deliver cars there to the ACL? A. The Seaboard delivers in H Yard to ACL.

Q. Where does Southern deliver? A. They deliver in C Yard. They come in from [37] the north from what is known as Simpson Yard on their railroad.

Mr. Foster: That's all I have.

Recross Examination by Mr. Milledge:

Q. What kind of facility, Mr. Jenhette, is the Jacksonville Terminal Company in regard to freight traffic? I'm not talking about passenger traffic. A. Jacksonville Terminal Company has three freight yards within its perimeter, and these freight yards are used for the interchange of traffic between Seaboard and FEC and Southern and FEC and FEC and Jacksonville Terminal Company proper.

Q. So all interchange between FEC and the other carriers that connect with the Jacksonville Terminal Company, Seaboard and Southern are all done on Terminal

Company property, whereas FEC-ACL interchanges are done on ACL property? A. That's right.

Mr. Foster: That's all I have.

Mr. Milledge: No more questions.

The Court: All right, sir. Thank you, sir.

(Witness excused.)

[44]

DEWITT M. STRICKLAND, having been produced and first duly sworn as a witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Foster:

Q. State your name, please. A. DeWitt M. Strickland.

Q. By whom are you employed, Mr. Strickland? A. By the Atlantic Coast Line Railroad Company.

Q. Where do you live? A. I live in Jacksonville, Florida.

Q. What is the title of your position with the [45] Coast Line, Mr. Strickland? A. Superintendent of terminals, Jacksonville.

Q. What does that job category cover, that supervisory job cover, Mr. Strickland? A. Jurisdiction over the terminal operation for the Coast Line in Jacksonville, Florida.

Q. Does that include Moncrief Yard? A. Yes, sir.

Q. Is that the primary facility that the ACL— A. That's the larger one; yes, sir.

Q. Do you know, Mr. Strickland, whether there are any other available facilities in the County that is as large an operation in terms of number of railroad cars handled on the basis of a month, say, as the Moncrief Yard is? A. There is not. Moncrief is the largest.

Q. Now, in order to help the Court understand the way Moncrief Yard functions Mr. Strickland, I'd appreciate it if you would take this map, explain to the Court how Moncrief Yard is laid out. A. Moncrief Yard is an arrangement of tracks that we use for classification, receiving and dispatching trains, also receiving interchange from other railroads. It is almost north and south, and the beginning of it at the south side is approximately at McQuade Street. Let's [46] see. That would be right here (indicating).

Q. Where is McQuade Street, the McQuade Street crossing with respect to the Beaver Street viaduct which the Court might be familiar with? A. Approximately 75 feet north.

Q. Would you point to where the viaduct would be? A. This would be Beaver Street viaduct.

Q. Where would the properties of Jacksonville Terminal Company be? A. They join approximately at Bay Street. Those under Beaver Street would be the Jacksonville Terminal property.

Q. All right, sir. With respect to the map, would you show the Court where the employees' entrance to Moncrief Yard is? A. The employees' entrance is where you see the shop buildings, the road comes in just south of that angle of the building which is the shop building there and that's the Moncrief Yard office where they report for service.

Q. The building circled in red is the yard office? A. That's correct.

Q. And that's where the men report for service? A. Yes, sir.

Q. Is there an entranceway on the bottom side of [47] the map underneath where the building is encircled? A. That is correct.

Q. Where is the north end of the yard? A. The north end of the yard is approximately Old Kings Road.

Q. That would be the end opposite from McQuade Street? A. That is correct.

Mr. Milledge: That is the left-hand side of this map; is that right?

Mr. Foster: That's right, as you are facing it.

By Mr. Foster:

Q. Mr. Strickland, if you will, show the Court where in Moncrief Yard you have the various yards that make it up. We have had reference here this morning to H Yard, B Yard and C Yard, so if you can— A. We have—Moncrief Yard is made up principally of three yards. We call them B Yard, H Yard and C Yard. The south end of B Yard starts at McQuade Street and comes in this direction up to there, which is approximately I would say 3500 feet.

B Yard consists of 15 tracks.

H Yard starts about 1500 feet north of McQuade Street and it consists of 13 tracks.

[48] C Yard—the north end of C Yard begins at Old Kings Road on there and it comes down approximately 4500 feet, I would say, and consists of 22 tracks.

Q. Now, Mr. Strickland, are those three yards marked in red on this map? A. Yes, sir. This is marked as C Yard. You can see where the area is at the westernmost track of C Yard is and this is the easternmost track of C Yard.

H Yard is down here and that is the easternmost track, and this is the westernmost track, and B Yard is marked here and the eastern and western tracks.

Q. All right, sir. If you will, show the Court where cars are delivered to ACL by FEC in Moncrief Yard. A. The

FEC delivers cars to us in H Yard along in this area (indicating).

Q. How do the cars get into H Yard? From which direction do they come? A. They come south to north.

Q. Would you indicate on the map there? A. Yes, sir. They come under the Beaver Street viaduct, underneath McQuade Street down to what we call H Yard and into the designated track in H Yard.

Q. As I understand it from Mr. Jennette's testimony, the Seaboard also makes deliveries into H Yard? [49] A. The same move; yes, sir.

Q. Would you show the Court how cars are delivered to FEC by ACL in Moncrief Yard? A. The cars delivered to the FEC arrive on Coast Line trains. They switch out of the trains into a track.

Q. Where is that done? A. That is done in C Yard, principally C Yard. The cars are assembled on Track 17 in C Yard. After the cars are assembled, we simply couple an engine to C Yard 17, that's about there, and we pull it straight down into B Yard and cut off and deliver it to the FEC.

Q. Where do the trains come into Moncrief from the north? A. They come into C Yard.

Q. Indicate how they come in. A. They cross Old Kings Road and come into the track we instruct them to come into, either of the 20 tracks.

Q. How do trains come into the Moncrief Yard over the Ocala— A. Ocala deliveries, they come the same way over the Ocala main line and come over Old Kings Road, into C Yard.

Q. How do the trains come in from and go out of Moncrief to your Tampa division? [50] A. Tampa division comes from the Tampa main line from the south to the north. They come in over Beaver Street, by Beaver Street

into H Yard, the same way the Seaboard and FEC bring their deliveries.

Mr. Foster: Okay. I have some other questions, but it might be appropriate for Mr. Milledge to question him on the map at this point.

Cross Examination by Mr. Milledge:

Q. FEC engines come into your yard over McQuade Street and how far do they go? A. How far the cars go depends on how many they have. If they have less than four cars—or 45 cars, we will put them in one of the shorter tracks in H Yard. If they have a long cut of cars, then we give them a long track. Occasionally we will require them to double in; that is if they have more cars than will hold in a short track, we will double them into another short track. After they cut off the cars, then the crew, the light engine with no cars, they go over into this area and stop in Moncrief Yard and deliver the documents to the yard office, which is encircled in red.

Q. When you say "light engine" that just means an [51] engine just by itself? A. That's right, nothing attached to it, a light engine.

Q. In that case the personnel go— A. The switchman making the cut, he stays in H Yard. When they go back they pick him up.

Q. Now, the road going into Moncrief Yard, the employee's entrance road itself, is it shown on here? A. No, it is not shown, but it comes right across there, goes across all these tracks and we have a parking area right in there for all the employees (indicating).

Q. And "right in there" is the area right next to the yard office? A. That is correct.

Q. The road generally in the vicinity of where the "M" is

on Moncrief Yard, a little on the left of it? A: Little on the left; yes, sir.

[55]

Q. Were you also present when an incident involving a road crew occurred about which Mr. Jennette did not testify? A. Yes, sir.

Q. If you will, tell the Court what occurred with respect to the road crew and when it happened. A. That was Friday morning, the 28th. We had this train called to leave Jacksonville going to Waycross, to leave at 8:45. About 9:00 o'clock, 9:00 A.M. the yard master told me that the crew wouldn't leave.

I went and saw the conductor, who was J. C. Williamson, and I asked him what the trouble was. He told me he couldn't handle the train because we had some cars that came over from the FEC. I also saw the flagman, L. S. DeVegter.

Mr. Milledge: I think I would like to object on the basis of hearsay.

[57]

The Court: I will sustain the objection.

By Mr. Foster:

Q. All right, sir. Well, if you will, Mr. Strickland, confine yourself to what happened, that is what you observed with your own eyes, but not what these men told you. A. Well, the train was ready to go. They had already made the brake test, the terminal brake test and the conductor had his list of cars in the train and he had the

waybills to move the cars that went with the list. That was about 9:00 o'clock A.M.

At 9:10 A.M. the conductor, flagmen and brakemen left the office and went walking toward the bus stop. That is where the bus picks them up to bring them back to town, and in the meantime the engineer had left the engine. He was with them. They were trying to catch the bus that leaves Moncrief at 9:15 and I came back through my office or through the big office and I saw this fireman named J. C. Sykes. I didn't know in the beginning that the train had a fireman, but he also left the property. I don't think he caught the 9:15 bus, because it was after that then, but he also left.

The train was not handled out of Moncrief by [58] the crew that was called to handle the train.

Q. Did the train have cars in it which ACL had received from FEC? A. Yes, sir.

Q. And that train was destined for the north? A. Yes, sir.

Q. And did it move with employees of ACL other than supervisory employees? A. Did not move with other than supervisory employees.

Q. And when it moved, who was in the engine? I don't mean names, but what category did the men fall into? A. The engineer was named—I mean he was a road foreman of engines and we had two other supervisors on the train.

Q. And what time did the train move? A. 9:17 A.M.

Q. Was it on time or late? A. 32 minutes late.

[59]

Q. Now, during the past week, that is Tuesday through Friday, Mr. Strickland, were there any changes or differ-

ences in the kind of work that employees refused to do in Moncrief Yard? A. Yes, sir.

[60] Q. If you will, describe for the Court what changes did occur in that respect. A. In the beginning it only involved engineers who refused to handle what we call solid cuts of FEC cars; that is cars that came from the FEC or that were going to the FEC.

Q. Would you give me an example of where one of those solid cuts were destined to be moved from and to and what the purpose of the move would be? A. Yes, sir. Whenever the FEC delivers in H Yard, that is a solid cut, a solid block of cars coming from the FEC to the ACL and these engineers in the beginning would refuse to switch up or classify those solid blocks. They would refuse to—we would assemble a block of cars in C Yard, Track 17 for movement down to B Yard and delivery to the FEC. They would refuse to handle that solid block of cars from C Yard to B Yard.

I believe it was—it was Thursday morning that the yard conductors and switchmen began refusing to handle solid blocks of FEC cars the same as engineers.

Q. This would be two additional crafts? A. That would be one additional craft. The conductors and yard switchmen belong to the Brotherhood of Railroad Trainmen, which is one craft.

Then later, Friday, early Friday morning I [61] believe or late Thursday night, then the engineers and the yardmen refused to handle FEC cars period. That is, it didn't have to—if it came in mixed up with ACL cars, they would switch ACL cars until they got to the FEC cars. Then they would refuse to switch any further on that particular train.

Q. Would they refuse to switch forward although there were some cars in the remaining part of the train not

destined to FEC? A. That is correct. If their next car was destined to go to the FEC, then they would refuse to switch that car, and then Friday morning about 9:00 o'clock is when the road crew refused to move the train.

[62]

Q. Mr. Strickland, if you will, tell me what the practical effect insofar as the operation of Moncrief Yard with respect to the refusals of ACL employees to work last week. In other words, describe what effect these refusals to work had on the overall operation of Moncrief Yard between Tuesday and Friday of last week when the truce was reached. A. The refusal to do normal work resulted in an accumulation of cars.

Mr. Milledge: Excuse me. I'd like to object to it framed this way. I don't mind having this man testify what did happen, but I think—

The Court: I thought that was his question.

Mr. Foster: Yes, what happened. Fine.

The Court: That was my understanding of the question.

The Witness: The refusal to do normal work resulted in more cars than usual [63] accumulating in the yard and standing in the main yard which is Moncrief Yard for longer periods of time and this, of course, included cars that were going to various people from Jacksonville. The spotting of cars or the pacing of cars to the various customers were delayed. We were probably about—we were probably approximately 12 or 16 hours behind with our terminal switching due to the congestion in the yard at the time this truce was called. We were delaying cars.

Q. Would some of the cars switched to these industries in Duval County come from and go to FEC through this interchange in Moncrief Yard? A. Yes, sir.

Q. If the activity which occurred last week began again, would there be a similar slowdown in pickup and delivery to these industries similar to that which occurred last week? A. Yes, sir.

[66]

Q. Referring back to the various parts of the Moncrief Yard that have been referred to previously, B Yard, C Yard and H Yard, if employees of Moncrief Yard refused to classify cars in C Yard for the reasoning given heretofore in the testimony here today, does that have an effect on the movement and classification of cars that are not destined for FEC? A. Yes, sir.

Q. In what way does it affect them? A. If they refused to move the FEC car, then you have an ACL car, a car going south on ACL, that would be delayed. You'd have to make some other arrangements.

Q. Would that be true as well with respect to cars that are being interchanged with Southern and ACL? A. It would delay Southern and ACL.

Q. Would that also be true with respect to switching in H Yard? A. Yes, sir, it would be the same principle.

Mr. Foster: That's all I have.

[69]

Cross Examination by Mr. Milledge:

Q. During the year to the FEC, but you get a car [70] count of 400 handling the 200 cars, and the same thing going north.

The Court: Your total traffic is 25% rather than 15%. As I say, I don't know anything about the

accuracy of it. I don't even know whether it is material to the hearing or not.

The Witness: I believe we handle, 25% of our cars are FEC, either going to or coming from.

By Mr. Milledge:

Q. Either coming or going? A. Yes, sir; I believe it is 25%.

Q. Now, these industries that you named, Southern Material, A & P Warehouse and so forth, these are industries which you switch to them right out of Moncrief Yard? A. We switch to them and switch from them.

Q. And from them? A. That's right.

Q. Some of that traffic to and from them originates from the FEC? A. Some of the traffic going to them comes from the FEC.

Q. And some going from them goes down through [71] your yard and down to the FEC? A. Right.

Q. Do the switch crews move the traffic from the industry sidings into Moncrief? A. Yes, sir.

Q. You didn't have any stoppage of that? A. None whatever.

Q. Including the FEC cars? A. Yes; that's right.

Q. All right, so all of the refusal to handle FEC business occurred right in Moncrief itself? A. That's right.

Q. All right. Okay. Now, would any of these ACL employees refuse to work, as you say, they refused to work at the point when they had to make some move regarding FEC traffic? A. That is correct.

Q. Some of them would work maybe an hour on their job until the yard master asked them to make a move which involved FEC traffic? A. That's correct.

Q. All right. Now, at that point did you relieve them, sir? A. There was—I relieved part of them and part of

them actually relieved themselves. The road crew—[72] Sometimes I didn't relieve the engineers or the firemen; they just walked off the engines without consulting anybody except possibly the conductor. There are some instances where the crews said they would no longer switch because they couldn't handle FEC cars or cars going to the FEC or that had come from the FEC and they were relieved and I relieved some of them and some of the other supervisors relieved some of them.

Q. Now, on this road move that you just told about, the two men in the engine you say really relieved themselves?

A. Apparently they did. I didn't see when they left, but I did see them walking toward the bus.

Q. How about the conductor and the brakemen and flagmen; were they relieved? A. I relieved those.

Q. I guess it was a fair assumption from the engineer and firemen you were going to relieve them, too? A. I don't know. I didn't see them. I didn't say anything to them.

Q. Did you work some of the men this way, that the men worked and then when they came to an FEC car or cars, you moved it with the supervisor and after that move was out of the way you let the regular crew continue the work?

A. Yes, sir. I believe it was Friday morning [73] that we did some of that. They were breaking up these trains that had come in from the north. When they switched off, they switched off the head block, which was all ACL cars or Seaboard. Then they came to cars going to the FEC in the train. They wouldn't switch that. We had a supervisor switch the cars out going to FEC and let them go back and switch the rest.

Q. And they were willing to do that? A. They did do it; yes, sir.

[74]

Q. What did you do if you had a block of FEC cars you took off, some off one end and some off the other;

[75] both ends? A. When Jacksonville—when freight came over from the FEC for Jacksonville proper, it was near the north end of the yard, we took a supervisory crew and set out or switched out the cars for Jacksonville proper and set the train back proper.

[76] Q. All right. Now, when these employees refused to move FEC cars in at least some of the instances you talked to them and tried to convince them they should move it; isn't that true? A. That is true.

Q. All right. A. I told them they were not FEC cars, they were Coast Line cars.

Q. And if they were Coast Line cars you felt like they ought to move them; right? A. I did. I sure did.

Q. You had a letter, didn't you, that you gave to some of them? A. Yes, I did.

Q. Take a look at that and see— A. That is the letter.

Q. That letter came over whose signature? A. C. E. Mervin, Jr., who is director of personnel.

Q. When did you first get a batch of those? A. I don't recall when we did get the first one, but I had had them a few days.

Q. You had had them before these FEC engineers started holding up the signs on Sunday? A. I had a few. I didn't have a big batch. I did [77] have a sample and a few more copies.

Mr. Milledge: Do you mind if we just offer this at this time out of turn?

Mr. Foster: No objection.

The Court: Well, receive it as Defendants' Exhibit 1.

(The instrument last above referred to was received in evidence as Defendants' Exhibit No. 1.)

By Mr. Milledge:

Q. Now, Mr. Strickland, even before Sunday when this—the signs started being carried, you had instructions that such activity as this might occur; had you not? A. I had had advice that this may be the activity that would be engaged in; yes, sir.

Q. There was discussion as to what should be done if it did begin? A. Yes, sir.

Q. Could you tell us about when you received that advice, if you recall? A. I don't recall, but it had been, oh, I'd say ten days or two weeks. It could have been more and it could have been less.

Q. Now, these road jobs that we talked about a minute ago, how many—when we say a road job, we are [78] talking about a train that is going to run out of here on the main line; right? A. That's right.

Q. When we talk about a—switch work, that is something that happens in the yard and a road job is something that is going to run out on the main line; right? A. Right.

Q. Now, how many of these trains that are going to run on the main line were affected? Was it just two or more than two? A. One.

Q. Just one? A. Yes.

[79]

Q. Is Moncrief owned by ACL? A. Yes, sir.

Q. Does Moncrief Yard adjoin any track or other property of the Florida East Coast? A. No, sir.

[80] Q. Can you tell me the approximate distance from the north end of the FEC property and the south end of Moncrief Yard? A. I would say 7,000 feet.

Q. And what property intervenes between Moncrief Yard and the northern end of the Florida East Coast tracks? A. The property of the Jacksonville Terminal Company.

[93]

L. T. ANDREWS, having been produced and first duly sworn as a witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Foster:

Q. State your name, please. A. L. T. Andrews.

Q. What is your occupation? A. General manager, Atlantic Coast Line Railroad.

Q. What is the general nature of your duties as general manager? A. Overall supervision of the movement of traffic on Atlantic Coast Line, the furnishing of equipment to load it in and the moving of the cars after they are loaded, general supervision over trains and the yard as well as the movement of trains.

[95]

Q. Now, there has been testimony with respect to the delivery of cars by ACL to FEC in Moncrief Yard, and the other way around, deliveries to, in Moncrief Yard.

Would you tell me, sir, the point at which ACL relinquishes control of cars that are delivered to FEC? A. We have in what we would call B Yard, a portion of Moncrief Yard, designated interchange tracks on which Coast Line places cars for delivery to the FEC. At the time and date those cars are placed on the interchange track and the documents made available to the FEC, the cars then become the sole property of the Florida [96] East Coast.

Q. What about the cars that are delivered by FEC in Moncrief Yard? A. The FEC makes the deliveries to

Coast Line at designated tracks in what we refer to as H Yard. After the FEC engineer pulls the cars into those tracks, then makes the documents available to the Coast Line, the cars then become the sole property of the Coast Line.

[106]

Q. Can you give me an approximate percentage of the overall cars which come in ACL and go out ACL to other points on the ACL system? A. Based on the samplings which I have done, it would be right close to 25%.

Q. Now, that is FEC or ACL? A. Coming in on Coast Line and going out on Coast Line that is delivered to or received from the FEC.

[108]

Q. Let me rephrase it.

Insofar as the procedure followed whereby FEC will deliver cars to ACL in Moncrief Yard and pick up cars delivered by ACL in Moncrief Yard, do you know how long that procedure has been followed? A. In excess of 25 years; for a longer period than that. I don't know how much longer.

Mr. Foster: That is all I have.

Cross Examination by Mr. Milledge:

Q. This agreement by which FEC delivered and received in your yard, is an agreement between your railroad and FEC; is it not? A. Yes, sir.

Q. All right. Now, that is a novel or unique arrangement; is it not, by which one railroad both receives and delivers in another railroad's yard? [109] A. No, sir, it is not novel or unique. I know in Richmond with the R.F.E.P. we do the same thing, and Savannah, except in those places Coast Line makes it.

Q. With the Seaboard? A. In Richmond and Savannah we pick up in the Seaboard and deliver, and in Savannah we do the same thing, make deliveries and pick up.

Q. Is there a terminal company in either of those places such as Jacksonville Terminal? A. Their Richmond Terminal and down in Savannah there was one jointly owned. It was recently destroyed, but it had nothing to do with the manner of interchange.

Q. Was any interchange done in either of those two terminals? A. No, sir.

Q. Here in Jacksonville interchange with other railroads except for FEC is done in the Terminal Company, except for ACL; is that right? A. That's right.

Q. Now, you have to pay FEC some amount of money when they come into your yard, don't you? A. Yes. We pay them an agreed—an agreed to basis.

[111] A. My job is to handle the traffic or operate the trains and the yard so as to properly handle the traffic over the Coast Line system.

Q. Do you have any governmental agencies you report to? A. Governmental agencies?

Q. Yes, sir, do you report to the ICC, Interstate Commerce Commission? A. Well, I am the reporting officer from the ACL to the Interstate Commerce Commission on some functions.

Q. Now, there was one road train on which the crew refused to move it out because it contained FEC traffic; just one, now, is that correct? A. There had only been one at the time of the—ceased the hostilities.

Q. All right, sir. And how many—how late was that in the bargain? A. I can't give you the exact figure, be-

cause I was not at Monerief that morning, but it wasn't delayed much in departing.

Q. 32 minutes? A. Because we had some supervisors out there that we put aboard.

Q. That would be approximately right, around 32 minutes late? [112] A. I would say approximately; right.

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[113] Q. Now, these crews that refused to work, the only thing they refused to do was to handle FEC traffic; isn't that correct? A. They refused to move cars that belonged to the ACL Railroad. They did not belong to the Florida East Coast. They had either not been delivered to the FEC or FEC had completed the delivery on the cars. It was Atlantic Coast Line cars which they refused to handle then.

Q. Whatever you want to call it, it was freight to or from FEC; right? A. Yes.

Q. Now, did the crews refuse to handle any through movement or what would have been through cars, anyway, that came in on ACL and were going out on ACL? A. Well, in refusing to move the train to Waycross, they refused to handle cars that came in on the Coast Line and went out on the Coast Line.

Q. Did you make any efforts to segregate the FEC traffic or did you just go ahead and make it up with other traffic?

A. Well, I will explain again. It was Coast Line traffic as far as we are concerned, was not FEC traffic. We put it into the outbound train.

Q. Well, accepting for the moment my definition [114] of FEC traffic, that is traffic to or from FEC, did you segregate that traffic and move it out in one train or did you mix it in with unrelated traffic? A. We switched the traffic from FEC origin and from Coast Line origin in one train, intermingled together.

Q. You knew your employees would move out traffic that was not to or from FEC, didn't you? A. Well, I did not know that they would not move out traffic that was on an outbound train from the FEC at the time they refused to move this particular train.

Q. Well, if you had known then I take it you could have segregated that into separate trains? A. No, sir. We don't drive a separate train for traffic that comes from each different origin or each different shipper. We have to handle it intermingled in and out of Jacksonville in the road trains.

Q. Well, if you had moved it out and put it in a separate operation, you knew your crews would move it; they hadn't refused to move any wholly what you would call unrelated traffic, unrelated to FEC? A. Well, the road crews had not refused to move any traffic to or from the Florida East Coast up until this one time, hadn't refused to move any train up until this instance.

Q. Your switch crews had moved all movements [115] unrelated to FEC? A. In switching an inbound train they would switch cars destined to Jacksonville, Coast Line or Seaboard. When they'd get down to the car in the inbound group destined to a point on the FEC, they would stop.

Q. All right, sir. Now, as of the Friday morning truce, as of that date had you relieved different switching crews? Had you sent them home? A. We relieved them when they refused to perform the work to which they were assigned.

Q. You had relieved them from further duty altogether the next day as well? A. We relieved them, told them they would hear from us later.

Q. And from the time they were relieved, if it was—whatever day it was, Tuesday or Wednesday or Thursday, you didn't—you made a decision you didn't want them to do any work until they would handle all the work; is that right? A. Well, we didn't have any work out at Motherief

Yard to which the employees were assigned that would be confined to the handling of traffic other than traffic that originated or was destined to the Florida East Coast.

Q. Starting on Thursday, you let some men continue to work even though they refused to handle FEC [116] traffic, put supervisors on to make the FEC move and then put the regular crew back on; didn't you do that? A. There was a few instances of that kind.

Q. Other men you didn't do that. That was a management decision to relieve them entirely; isn't that true? A. No, sir. We were trying to find some medium ground to try to keep from closing down Moncrief Yard.

Q. And there is a medium ground there, isn't there, letting the supervisors make the FEC moves and having your regular crews make the other moves? A. No, sir. I don't consider that to be a medium ground and I don't consider that we could operate under such a situation.

Q. Now, you told us a few minutes ago that there was some kind of detrimental effect on ACL moves, coming in ACL and going out ACL. You don't mean to tell me your yard crews or road crews were refusing to move traffic that came in on ACL and was also going out on ACL? A. No, they did not refuse that, but because of their refusal to work and handle the cars interchanged from the ACL and FEC down-state destinations, it slowed us up badly and we got further and further behind.

Q. Isn't it true, Mr. Andrews, that the slowdown came because you relieved 30 men entirely of their duties? [117] A. The slowdown came because the men out there would not perform the switching, the switching to the FEC or from FEC interchanges with Coast Line or cars from FEC, and when they refused to handle it, we had to get those crews out of the way and try to get somebody that would do the

work, and the cause—it was a very slowing down operation and it got slower and slower.

Q. Now, how about the mail that you were talking about? You don't deliver mail—FEC doesn't carry any mail over its rails any more, does it? A. No, sir. FEC doesn't handle that.

Q. So any kind of mail you are talking about is mail going in and out on ACL; isn't that true? A. That is correct.

Q. Did you have any accidents out there? A. We had some derailments; yes, sir.

Q. Through your supervisors? A. Offhand I can't tell you who was running the engines or how many switches when it happened, but I had some reports come across my desk about some derailments out there.

Q. That happened before Sunday night, didn't it? A. It happened during the period we were working with the supervisors and the others intermingled out there.

Q. You have derailments out there quite [118] frequently, don't you? A. We have them occasionally; yes, sir.

[120]

Q. Now, if ACL people refused to receive or deliver to FEC, what effect would that have on FEC interchange? I mean, would it cut it off? A. If they refused to deliver to or receive from it, bound to cut it off. It would cut off Coast Line [121] revenues, too.

Q. Do you know approximately how much of FEC interchange through the Jacksonville Gateway comes from ACL, that is both ways? A. No, I have not checked those figures. We have a substantial interchange with the Florida East Coast.

Q. It would be roughly 60% of interchange in this area with the ACL? A. I would hesitate to estimate it, because I haven't looked at the figures. It could very well be.

Q. Now, straighten us out on something.

On a monthly basis you have got a 93,000 car count; right? A. Yes, approximately. That is, it varies from month to month.

Q. All right. How many to and from FEC? A. Of that count it would be roughly—within a 12-month period we have between seventy-five and eighty thousand cars in each direction. In a 12-month period we direct seventy-five to eighty thousand and get from them approximately seventy-five to eighty thousand, which averages roughly 480 cars from and to the FEC and it breaks down pretty evenly, about 220 in each direction based on a 12-month period.

[124]

Q. Now, the ACL is interested, is it not, in continuing to move traffic to FEC? A. Yes, sir.

Q. It is so interested in that that it is willing to jeopardize its whole operation in order to maintain that move; isn't that true? A. The traffic from the FEC means a lot revenue-wise to the Coast Line. Certainly we don't want to jeopardize our operation to the other part of the railroad, but we do want to handle any and all traffic that is offered to the Coast Line.

[126]

J. D. Sims, having been produced and first duly sworn as a witness on behalf of defendants, testified as follows:

Direct Examination by Mr. Milledge:

Q. Would you state your name, please, sir? A. My name is J. D. Sims.

Q. Where is your home, Mr. Sims? A. Pensacola, Florida.

Q. Do you have an official capacity with the Brotherhood of Locomotive Engineers? A. Yes, sir.

Q. What is that official capacity? [127] A. Assistant Grand Chief Engineer; vice president.

Q. Is that the same thing as a vice president? A. Yes, sir.

Q. Is that a national office, local office? A. International.

Q. Is that an appointed or elected office? A. Elected.

Q. Have you been assigned to the Florida East Coast dispute? A. Yes, sir.

Q. Now, is there a strike presently in progress between the FEC and the Brotherhood of Locomotive Engineers representing the locomotive engineers on the FEC property? A. Yes, sir.

Q. And is that a strike under the Railway Labor Act? A. Yes, sir.

Q. All right. Now, how did that—what procedures were followed prior to that strike? A. The Florida East Coast Railroad served a Section 6 notice under the Railway Labor Act, November 30th of 1964 to abrogate the existing contract between Florida East Coast and the Locomotive Engineers and substitute in lieu thereof what is commonly referred to as a yellow dog contract.

[128] Q. Now, you say this was begun by a Section 6 notice. What does that mean, Section 6 of the Railway Labor Act? A. Yes, sir.

Q. Now, is that the customary procedure followed when one railroad carrier wants to change the contract? A. Yes, sir.

Q. And is the same procedure used when a labor organization wishes to change the contract? A. Yes, sir.

Q. And is that document served on the other party? A. Yes, sir.

Q. Now, incidentally, does the Brotherhood of Locomotive Engineers, is it certified as the bargaining agent for the Locomotive Engineers on the railroad property? A. Yes, sir.

Q. Who certified it? A. The National Labor Relations Board.

Q. Is that the organization set up under the Railway Labor Act? A. Yes, sir.

Q. After the service of the Section 6 notice under the Railway Labor Act that you talked about, what [129] happened next? A. Negotiations were conducted in connection with the notice.

Q. Is that procedure provided for by the Railway Labor Act? A. Yes, sir.

Q. Were those negotiations successful? A. No, sir.

Q. Then what happened? A. After an impasse was reached, the National Mediation Board intervened and assigned a mediator.

Q. Let me stop you right there. How did the National Mediation Board get into the picture? Were those services invoked by one party or other? A. Yes, sir.

Q. In this case which party invoked the services? A. The Engineers.

Q. Now, did the National Mediation Board take jurisdiction? A. Yes, sir.

Q. Then what? Did it decide, the mediators? A. That is correct.

Q. Were there sessions with the mediator? A. Yes, sir.

[130] Q. Were representatives of the FEC present? A. Yes, sir.

Q. And representatives of your organization? A. Yes, sir.

Q. Did negotiations continue with the mediator present? A. Yes, sir.

Q. What happened—how long did those sessions go on?

A. For several months.

The Court: May I ask the materiality of this?

Mr. Milledge: Well, it is to establish there was what is called a major dispute under the Railway Labor Act.

The Court: Can't you stipulate to that?

Mr. Foster: I think we will stipulate to it. I think we may have even alleged that in the complaint.

Mr. Milledge: All right.

Q. You went through mediation and arbitration? A. Yes, sir.

Q. And that was this year? A. This year.

Q. And the B.L.E. accepted arbitration and the [131] FEC refused arbitration? A. Yes, sir.

Q. And 30 days after that, what did the FEC do, or approximately 30 days? A. They put in their notice that they served November 3, 1964.

Q. Did they change the rules of rate of pay and working conditions? A. Yes, sir.

Q. What was the response of the B.L.E.? A. Went on strike.

Q. What date was that? A. March 12, 1967.

Q. Now, when the FEC prior to this change on March 12th and March 13th, was the FEC prior to that change at that time paying engineers essentially as all other class one railroads in the United States? A. Yes, sir.

Q. Is FEC a class one railroad? A. Yes, sir.

Q. Is ACL a class one railroad? A. Yes, sir.

Q. Since that time are the rates of pay the same or are they less for engineers? A. On the FEC they are much less.

[132] Q. Now, on March 13th were any pickets placed in the Jacksonville area by the striking B.L.E. engineers of the FEC? A. Yes, sir.

Q. Where were they placed? A. McQuade Street, and Stockton Street.

Q. What did those—what movements cross Stockton Street? A. Seaboard Airline interchange to the Florida East Coast both ways; to and from.

Q. Since that date have any Seaboard union crews completed or made interchange with FEC? A. No, sir.

Q. All right. You put up the line on McQuade Street as well? A. Yes, sir.

Q. Did that affect Southern interchange with FEC? A. Yes, sir.

Q. Since that date have any union crews from Southern made interchange with FEC? A. No, sir.

Q. All right. Now, on March 11th, did you have a conference with Mr. Mervin? A. Yes, sir.

Q. Who is Mr. Mervin? [133] A. Director of personnel at the Coast Line.

Q. What was the substance and the purpose of that meeting? A. To advise Mr. Mervin where we had placed pickets and their reasons for being there and as to why we would place the pickets.

Q. Have you had meetings with Mr. Mervin since that date? A. Yes, sir.

Q. Have there been discussions with Mr. Mervin about some method of appealing to ACL employees not to effect interchange with FEC? A. Yes, sir.

Q. Now, these men that have been out at the employees' entrance to Moncrief Yard, have they been requesting ACL people not to go to work? A. No, sir.

Q. Has that been a picket line in the usual sense of a picket line? A. No, sir.

Q. Usually a picket line requests people not to cross it; is that correct? A. That is correct.

Q. Now, were these ACL employees, what were they requested to do? [134] A. Not handle FEC interchange to and from FEC.

Q. What were they requested to do in regard to the rest of ACL operation in Moncrief Yard? A. Continue as usual.

Q. Now, was there some agreement reached with Mr. Mervin prior to this being undertaken that no man who refused—no ACL employees who refused FEC interchange would be fired? A. No written agreement.

Q. Did you ever threaten to close down the whole ACL operation or the whole Moncrief operation? A. No, sir.

Q. Has any ACL employee been instructed not to work? A. No, sir.

Q. Have these different men that have been relieved requested each day to mark back up for work? A. Yes, sir.

Q. What percentage of the freight movement to and from the FEC from the Jacksonville Gateway comes over ACL? A. According to Mr. Mervin, approximately 60%.

Q. And how much from Seaboard? A. Approximately 30%.

Q. How much from Southern? [135] A. 10%.

The Court: What was the 60% figure?

Mr. Milledge: ACL.

The Witness: ACL.

Q. When were the men out at the employees' entrance of ACL, when were the men carrying signs? When were they

out there? A. 2:20 P.M. Sunday, April the 23rd was the initial—

Q. Let me—I will just lead you a little bit here.

Were they out there continuously around the clock? A. No, sir, only during the shift change hours from 6:00 A.M. to 8:00 A.M.; 2:00 P.M. to 4:00 P.M. and 10:00 P.M. to 12:00 midnight.

Q. Now, were you out there during most of the time when these men were out there carrying the signs? A. Yes, sir.

Q. Was their conduct in all respects peaceful? A. Yes, sir.

Q. Did any ACL employees turn around and go home? A. No, sir.

Q. Did they all go in to work? A. Yes, sir.

[136] Mr. Milledge: That seems to be all I've got.

[139]

Redirect Examination by Mr. Milledge:

Q. Let me go back to Seaboard. Prior to March 12th, did those roads, Seaboard and Southern, move mixed cuts, FEC and destined for other carriers in mixed batches across Stockton and McQuade Streets? A. Yes, sir.

Q. Did they segregate that traffic as of March 13th and move it only in solid blocks across? A. Yes, sir.

Q. When Seaboard is coming across for something [140] going to ACL, do you picket that? A. No, sir.

Q. In your discussions with Mr. Mervin—strike that. If ACL interchanged with FEC in the Jacksonville Terminal Yard, would your—could you picket at McQuade Street and have the same effect? A. No, sir.

Q. Well, under its present operation you couldn't; is that right? A. Right.

Q. Did you ask Mr. Mervin to make arrangements to have interchanges made between FEC and ACL in the Jacksonville Terminal and keep the FEC engines from coming all the way in Moncrief? A. Yes, sir.

Q. Did he agree or refuse? A. He refused.

Q. Did you ask him to put pickets within Moncrief Yard at the northern end of B Yard and H Yard to picket movement, FEC movement from those yards into the rest of the Moncrief Yard? A. Yes, sir.

Q. Did he agree or refuse? A. Refused.

[141] Q. All right. Did you ask him to segregate traffic up in Waycross so that when it came across the Kings Road crossing that it would be solid FEC and solid non-FEC? A. Yes, sir.

Q. So if you picketed that Kings Road crossing, you would picket just FEC traffic? A. Yes, sir.

Q. Did he agree or refuse? A. He refused.

[168]

CHARLES E. MERVIN, JR., having been produced and first duly sworn as a witness on behalf of defendants, testified as follows:

Direct Examination by Mr. Milledge:

Q. Would you state your name, sir? A. My name is Charles E. Mervin, Jr.

Q. And do you hold an official capacity with the Atlantic Coast Line Railroad? A. Yes. I am director of personnel for Atlantic Coast Line.

Q. For how long have you held that position, sir? A. Since February 1st, 1966.

Q. Did you participate in the decision this week, sir, to relieve from further duty temporarily those of your employees who refused to move FEC traffic? A. I was aware of it; yes, sir.

Q. Do you know why the decision was made to relieve them rather than just put them aside for the moment while a supervisor made the move? A. Yes, sir.

Q. Why was that? [169] A. Because I understood that these men were failing to carry out instructions and in effect refusing duty.

Q. So that the decision was made to relieve them from further duty rather than just leave them out there and put them back on the train, back on the engine as soon as the particular FEC cars had been moved? A. They were relieved temporarily for the matter to be considered to determine what, if any, action would be taken by the company.

Q. Now, starting about Thursday you didn't relieve all the men; you left some of them out there? A. As far as I know any of them who refused when instructed to perform their duties were relieved.

Q. You don't know about the change of policy starting about Thursday in which the supervisors would make the FEC movement or FEC traffic and then the men put back on the engines? A. Well, I understood that this was one thing that was considered, that the supervisory people would handle from interchange tracks to classification and that some movements were made like that; yes, sir.

Q. Now, back starting on March 11th, did you have a conference with Mr. Sims about the activity of FEC striking engineers? [170] A. Well, of course, I had several meetings and discussions with Mr. Sims and I believe I had one around March the 11th or 12th, somewhere in there.

Q. Now, in those meetings with him, was it discussed about keeping FEC engines out of your Moncrief Yard?

A. No, not of keeping FEC engines as such out of Moncrief; not specifically so, not that I recall.

Q. Were there discussions of which you were a part about classifying your traffic up North or somewhere else so they'd come down South solid in FEC cuts? A. There was some brief discussion about that; yes, sir.

Q. It was the decision of the ACL management not to do that? A. Yes, because this wasn't practical and could possibly have been illegal.

Q. Was there a discussion about permitting pickets to go within Moncrief Yard, picket where the stuff moved up, the cars moved up from H Yard up into C Yard? A. You mean was there some discussion with me to get—some conferences to permit the FEC pickets to come up into Moncrief Yard?

Q. Yes. A. I am not real sure, Mr. Milledge. It seems to [171] me there was some idea advanced, but this was just so ridiculous that I couldn't consider it.

Q. Well, you refused or the management refused? A. I don't even think it was seriously considered at all.

Q. That was turned down out of hand, you might say? A. Well, yes. It just wasn't seriously considered.

Q. Now, this picketing—this sign carrying operation or some form of picketing was discussed on numerous occasions between you and Mr. Sims, on several occasions perhaps is a better word? A. Yes, sir; that possibility was discussed.

Q. And did you ask him to postpone it at different times? A. I didn't ask him particularly to postpone it. Our discussions were along the line that they would postpone it pending consideration of some suggestions and ideas which were advanced by Mr. Sims.

Q. And some suggestions by you, too, were they not? A. The only suggestion that I advanced was that the matter be deferred as much as possible and they try to avoid

that, if at all possible. I made no specific suggestions regarding the operation that I recall.

[176]

Mr. Smith: We suggest that had the Federal law, substantive law preempted this area, that the Federal Court would not have [177] remanded this to this Court if it appeared from the face of the complaint setting forth the facts that have been proved to the Court that there was indeed any grounds on which the State Court was precluded from acting.

[185]

• • • The Norris-LaGuardia Act, however, clearly applied only to Federal Court, and if the Court will consider the order of remand, there is a citation to Moore's authority, wherein Mr. Moore says that the [186] better rule, and this is what we argued to Judge McRae, is if there is no jurisdiction to grant relief, then the matter is remanded to the State Court to determine whether or not it is subject to relief in the State Court.

[223]

Mr. Smith: Thirdly, if the railway had a major or minor dispute and all that, the question of the Norris-LaGuardia Act and the decisions of the court under the Clayton Act inasmuch as there is no finding in here that the activity is legal under Florida law. There is a reference to that Statute that extends over several lines, and it first starts out with "No restraint or injunction" which seems to be what the court was interested in, because had it been going on into the legality or illegality, it would never have gotten to a jurisdictional—because it could

have been done under the Clayton Act and it never would have been remanded. As Mr. Milledge argued to Judge McRae, the court should retain jurisdiction if it was finding substantive law under the Clayton Act, and the free speech has been raised before, up before the First District, the steelworkers, discussed on 27 and on 44, 45 and 46, and we show that the Thornhill case has been completely emasculated by later decisions of the Supreme [224] Court.

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IN THE
CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT

IN AND FOR DUVAL COUNTY, FLORIDA,

Case No. 673536

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood; and G. Q. RUTLAND, individually and as a member of said Brotherhood,

Defendants.

Order for Temporary Injunction

(Filed May 3, 1967)

This cause came on to be heard upon plaintiff's verified complaint and upon plaintiff's prayer for a temporary injunction. The Court has considered the evidence in support of plaintiff's prayer for a temporary injunction and has considered the arguments of counsel. The Court finds as follows:

1. This action arises under the Constitution and Laws of the State of Florida, including the Declaration of Rights of the Florida Constitution; the Florida Restraint of Trade Laws, Chapter 542, Florida Statutes; the Florida Labor Laws, Chapter 447, Florida Statutes; and the Florida Transportation Act, Chapter 350, Florida Statutes. This court has jurisdiction of the subject matter and of the parties hereto.

2. Plaintiff, Atlantic Coast Line Railroad Company (hereinafter "ACL") is a common carrier authorized to do business in the State of Florida. Plaintiff as a common carrier serves numerous communities within the State of Florida, in addition to the City of Jacksonville and County of Duval and provides extensive passenger, mail, freight, including perishable freight, bill and express laden services to these communities. Plaintiff is further obligated under the aforesaid Florida Transportation Act to provide interchange services with various connecting railroad common carriers including the Florida East Coast Railway Company (hereinafter "FEC").

3. Defendant Brotherhood of Locomotive Engineers (hereinafter "BLE") is an unincorporated labor organization composed solely of members who are employees of railroad carriers subject to the Railway Labor Act, 45 U.S.C. §151, et seq. Defendant J. E. Sims is Assistant Grand Chief Engineer of the BLE, and by his own admission is in charge of promoting the acts hereinafter enjoined. The other defendants, individually and as agents of defendant brotherhood, have participated in active concert with defendant Sims. The members of the BLE employed by the FEC are on strike against the FEC. The ACL has valid labor agreements between its employees represented by their respec-

tive Brotherhoods, including defendant BLE, which are presently in full force and effect. There is no labor dispute of any kind between ACL and its employees which gives rise to the acts hereby enjoined. There is no labor agreement or labor dispute between ACL and the employees of FEC.

4. On Sunday, the 23rd day of April 1967, the BLE and the Local Lodge Division 823 of BLE by and through their officers and members, including individual defendants J. D. Sims, J. E. Eason, H. M. Sawyer, W. K. Morris and G. Q. Rutland, proceeded to picket and patrol at employee entrances to the property and interchange yard of the ACL in Duval County, Florida, known as Moncrief Yard and to disburse pamphlets to the ACL employees going to work through said entrances. The express and manifest intent of the defendants in distributing the pamphlets was to induce the employees of ACL in Moncrief Yard to refuse to handle, move or carry out their regularly assigned duties with regard to any ACL railroad car which had arrived in Moncrief Yard from the FEC or which had arrived in Moncrief Yard destined to the FEC. Defendants also seek to induce and coerce plaintiff to refuse interchange with the FEC and thus to prevent competition in transportation of commodities by FEC. The avowed purpose of the picketing is to cause the plaintiff and its employees to cease furnishing interchange to the FEC and thus to bring the operation of the FEC to a halt; the result of the picketing is considerably more broad, as stated below. The intent and purpose of this picketing and distribution of pamphlets was not lawfully to advertise or to advise either the public in general or the employees of the ACL of the BLE labor dispute with FEC but was to accomplish various purposes,

described below, which are in violation of the law of the State of Florida.

5. As a result of the inducement and coercion by the BLE and other defendants through picketing of the ACL employee entrances and through the distribution of pamphlets, the employees of ACL in Moncrief Yard have refused to handle, move or interchange any ACL railroad car arriving from or destined to the FEC, which refusal has had and will have the following results:

(a) Disruption of the interchange operations of the ACL in Moncrief Yard;

(b) Effective blockade of railroad cars destined to points within and without the County of Duval and State of Florida;

(c) Stoppage of cars handling perishable goods and United States mail;

(d) Inability to properly serve shippers within and without the County of Duval due to interference with traffic patterns and schedules and due to the necessity of using supervisory personnel from other points on the ACL to operate Moncrief Yard;

(e) Interference with the effective interchange of freight to and from other connecting railroad common carriers, including the Jacksonville Terminal Company, the Seaboard Air Line Railroad Company, Southern Railway System, FEC and others;

(f) Substantial loss of profits and revenue to ACL by diversion of traffic and loss of traffic.

The picketing and other aforementioned activities of defendants, if resumed, will cause plaintiff irreparable harm

for which no adequate remedy at law exists and will adversely affect all of the people who are serviced by and do business with plaintiff and all railways served by plaintiff. It would further adversely affect large economic areas of the State of Florida which rely upon rail service by plaintiff. Far greater injury will be inflicted upon plaintiff, employees of plaintiff, and citizens of the State of Florida by denial of plaintiff's application for temporary injunction than will result to defendants by granting such relief.

6. The decision of this Court is not made upon the basis of violence. There is no evidence in the record of any violence or threat of violence involved in the picketing.

7. The picketing and distribution of pamphlets by the defendants is illegal under the law of the State of Florida for the following reasons:

(a) The defendants' acts constitute coercive pressure on the ACL and its employees which is unlawful and contrary to the established public policy of the State of Florida.

(b) The picketing is outside the area of the struck industry, the FEC, in violation of the aforesaid Florida Labor Law, and is in the nature of a secondary boycott.

(c) The defendants seek to force plaintiff to violate its statutory duties under the aforesaid Florida Transportation Act to provide service to its various shippers and to provide interchange service to the FEC, which is illegal not only under the Florida Transportation Act, but also under the aforesaid Florida Restraint of Trade Laws;

(d) The inducements and coercions of defendants constitute a tortious interference with the contractual

relationship between ACL and its employees and between ACL and its various shippers;

(e) Said inducements and coercions of defendants constitute an unwarranted and unconstitutional interference with the business of the ACL and constitute a tortious interference with the prospective business advantage of ACL; and

(f) Said actions operate as a restraint upon trade in violation of the Florida Restraint of Trade Laws and seek to compel ACL and its employees to enter into a combination with defendants to prevent competition in transportation of merchandise, produce and commodities by FEC.

IT IS, THEREFORE,

ORDERED that the defendants, Brotherhood of Locomotive Engineers, Local Lodge Division 823 of the Brotherhood of Locomotive Engineers, J. E. Eason, J. D. Sims, H. M. Sawyer, W. K. Morris, G. Q. Rutland, individually, and their officers, agents, servants, employees, representatives and members, when said members are acting as officers, agents, servants, employees or representatives of defendants, and all other persons acting at the direction of or in concert or participation with defendants, are temporarily enjoined from:

1. Picketing the property owned and operated by plaintiff in Duval County, Florida, known as Moncrief Yard.

2. Causing, directing, authorizing, recommending, sanctioning or participating in the patrolling, picketing or blockading of entrances or exits used by employees of plaintiff in connection with their work or in connection with plain-

tiff's land, buildings, facilities or other property owned or controlled by plaintiff in Duval County, Florida, known as Moncrief Yard.

3. Causing, directing, recommending, or inducing or attempting to induce the employees of plaintiff who report to work at the property owned and controlled by plaintiff known as Moncrief Yard, to cease performing any of their regularly assigned duties of their employment, including specifically the distribution of literature to plaintiff's employees recommending, causing, directing or inducing plaintiff's employees to cease performing such duties.

4. Interfering in any way with the operation of plaintiff's property located in Duval County, Florida, known as Moncrief Yard.

The defendant labor organizations, their appropriate officers, agents, servants and employees and the other defendants herein are directed and mandatorily enjoined to withdraw and countermand any order, directive, recommendation, request or other advice, heretofore issued by any of defendants' officers, agents or members, asking or inducing any of plaintiff's employees working on plaintiff's property known as Moncrief Yard not to carry out certain of their regularly assigned duties in connection with the operation of said Moncrief Yard by the plaintiff.

This injunction is limited to the picketing and other aforementioned actions of defendants arising out of defendants' existing disputes with the Florida East Coast Railway Company.

This temporary injunction shall become effective upon the filing by plaintiff and acceptance by the Clerk of this Court of a good and sufficient bond in favor of defendants in the amount of Twenty-Five Thousand (\$25,000) Dollars.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 3d day of May, 1967.

/s/ CHARLES A. LUCKIE
Circuit Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
Case No. 67-418-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,
vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood, and G. W. RUTLAND, individually and as a member of said Brotherhood,

Defendants.

Petition for Removal

(Filed May 23, 1967)

To the Judges of the United States District Court for the Middle District of Florida:

The Petition of Brotherhood of Locomotive Engineers; Local Lodge Division 823 of the Brotherhood of Locomotive Engineers; J. E. Eason; J. D. Sims, H. M. Sawyer; W. K. Morris and G. Q. Rutland, respectfully shows:

1. On the 27th day of April, 1967, an action was commenced against Petitioners in the Circuit Court, in and for the Fourth Judicial Circuit of Florida, styled *Atlantic Coast Line Railroad Company, a corporation, Plaintiff, vs. Brotherhood of Locomotive Engineers, et al., Defendants*, Case No. 67-3536, by the filing of a complaint against petitioners, a copy of which is attached hereto. True copies of all process, pleadings and orders filed in said cause are attached hereto.

2. On April 27, 1967, petitioners removed said cause to this Honorable Court and on the same date hearing was held on respondent's Motion to Remand to the state court. This Court entered its order on that date remanding the cause to the state court. Case No. 67-338-Civ-J.

3. Upon remand on May 1, 1967, the state court took testimony substantially identical to that taken by this Court in Case No. 67-335-Civ-J. *Atlantic Coast Line R.R. Co. vs. Brotherhood of Locomotive Engineers, et al.*

4. On the 3rd day of May, 1967, an order was entered in said state court action entitled "Order for Temporary Injunction" against petitioners, a copy of which order is attached hereto.

5. The action herein sought to be removed is a civil action of which it now appears that this Court has original jurisdiction under the provisions of 28 USC, Sections 1331, 1332 and 1337. The cause is one over which the Court has subject matter jurisdiction, and such jurisdiction is not precluded by the applicability of the Norris-LaGuardia Act. 29 U.S.C. §101 et seq. *Avco Corp. vs. IAM Aero Lodge 735*, 35 U. S. Law Week 2666 (6th Cir. May 2, 1967; reported in Law Week issue dated May 16, 1967).

6. The cause is one which may be removed to this Court by Petitioners, pursuant to 28 USC §1441, in that it appears from the complaint, together with the subsequent "Order for Temporary Injunction," that this is a civil action arising under one or more of the following Acts of Congress regulating Commerce: Railway Labor Act, 45 U.S.C. §151 et seq.; Interstate Commerce Act, 49 U.S.C. §1 et seq. In addition, the matters in controversy arise under the Constitution and laws of the United States, and further the citizenship of the plaintiff is diverse from that of all defendants, and the matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs.

7. Petitioners file herewith a bond with good and sufficient surety conditioned, as provided by Title 28, United States Code, Section 1446 (d), that they will pay all costs and disbursements incurred by reason of the removal proceedings hereby brought should it be determined that this action is not removable or is improperly removed.

WHEREFORE, Petitioners pray that the above action now pending against them in the Circuit Court of the Fourth Judicial Circuit of Florida be removed therefrom to this Court.

RUTLEDGE AND MILLEDGE

Attorneys for Defendants

601 Flagler Federal Bldg.

Miami, Florida

ALLAN MILLEDGE

RICHARD L. HORN

[Jurat and Certificate of Service omitted in printing.]

IN THE
UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-418-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

—VS.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood, and G. Q. RUTLAND, individually and as a member of said Brotherhood,

Defendants.

Motion to Remand

(Filed May 29, 1967)

Plaintiff, Atlantic Coast Line Railroad Company, moves for the entry of an order remanding this action to the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, from which it was improperly removed, and plaintiff states the following grounds for its motion:

1. Removal of this action is, improper under 28 U.S.C., Sec. 1441.

2. Removal of this action is improper under 28 U.S.C., Sec. 1446(b). The Petition for Removal filed herein is untimely.

3. Plaintiff's action is not one of which this Court has original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States.

4. Plaintiff's action is not of which this Court has original jurisdiction under 28 U.S.C., Sections 1331, 1332 or 1337, or under any law of the United States regulating trade or commerce.

5. The testimony introduced before the state court differed in several material respects from that taken by this Court in Case No. 67-335-Civ-J.

6. The Petition for Removal does not sufficiently allege or establish diversity of citizenship. Certain of the defendants are citizens of the State of Florida. The Petition for Removal based on diversity of citizenship is untimely.

7. By order dated April 27, 1967, in Case No. 67-338-Civ-J remanding this identical action to state court, this Court decided adverse to petitioners all issues raised by the Petition for Removal filed herein. No new or different fact, order, motion, or pleading has occurred or been entered since date of said prior order of Court from which jurisdiction in this Court now appears.

ROGERS, TOWERS, BAILEY, JONES & GAY

By DAVID M. FOSTER

1300 Florida Title Building

Jacksonville, Florida 32202

[Certificate of Service omitted in printing.]

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-418-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,

—vs.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,
Defendants.

Order

(Filed July 6, 1967)

After due notice and hearing, it is

ORDERED that Plaintiff's Motion to Remand is granted, and this cause is remanded to the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida. A certified copy of this order shall be mailed by the Clerk of this Court to the Clerk of said Circuit Court.

DONE AND ORDERED at Jacksonville, Florida, this 6th day of July, 1967.

WM. A. McRAE, JR.
Judge

IN THE
CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA
Case No. 67-3536

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Plaintiff,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS; J. E. EASON, individually and as an official of
said Brotherhood; J. D. SIMS, individually and as an
official of said Brotherhood; H. M. SAWYER, individ-
ually and as a member of said Brotherhood; W. K.
MORRIS, individually and as a member of said Brother-
hood; and G. Q. RUTLAND, individually and as a member
of said Brotherhood.

**Motion to Dissolve Order for Temporary
Injunction and to Dismiss Case**

(Filed April 25, 1969)

Come now the defendants, Brotherhood of Locomotive
Engineers, et al., by and through their undersigned coun-
sel, pursuant to Florida Rule of Civil Procedure 1.610(c),
and move the Court for an Order dissolving the Order
for Temporary Injunction entered herein on May 3, 1967,
and dismissing the cause, and for grounds would show:

1. The Order for Temporary Injunction entered herein on May 3, 1967, is based solely upon the application of Florida State law to the conduct of a party which has unsuccessfully exhausted the procedures of the Railway Labor Act for resolution of a major dispute.

2. On March 25, 1969 the United States Supreme Court rendered its opinion in *Brotherhood of Railroad Trainmen et al. vs. Jacksonville Terminal Company*, — U.S. —, 37 LW 4247 (1969), reversing the judgment of the Duval County Circuit Court, Case No. 66-2941-E, and that of the District Court of Appeal of Florida, First District, reported at 201 So. 2d 253 (1967).

The *Trainmen* decision is squarely controlling upon this case which is identical in all material respects. A copy of the opinion of the United States Supreme Court is attached hereto as Exhibit "A". The pertinent holding of the Court is as follows:

"In short, we have been furnished by Congress neither usable standards nor access to administrative expertise in a situation where both are required. In these circumstances there is no really satisfactory judicial solution to the problem at hand. However, we conclude that the least unsatisfactory one is to allow parties who have unsuccessfully exhausted the Railway Labor Act's procedures for resolution of a major dispute to employ the full range of whatever peaceful economic power they can muster, so long as its use conflicts with no other obligation imposed by federal law. Hence, until Congress acts, picketing—whether characterized as primary or secondary—must be deemed conduct protected against state proscription." 47 LW at 4254 (March 25, 1969) Emphasis added.

WHEREFORE, defendants move the Court for an Order dissolving the Order for Temporary Injunction and dismissing the cause.

MIDDLEGE AND HORN,
Attorneys for Defendants,
150 S. E. Second Avenue
Miami, Florida 33131

By RICHARD L. HORN

[Exhibit and Certificate of Service omitted in printing.]

IN THE
CIRCUIT COURT OF THE FOURTH
JUDICIAL CIRCUIT

IN AND FOR DUVAL COUNTY, FLORIDA

Case No. 67-3536

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE
ENGINEERS; J. E. EASON, individually and as an official of
said Brotherhood; J. D. SIMS, individually and as an
official of said Brotherhood; H. M. SAWYER, individually
and as a member of said Brotherhood; W. K. MORRIS,
individually and as a member of said Brotherhood; and
G. W. RUTLAND, individually and as a member of said
Brotherhood,

Defendants.

Motion to Assess Costs, Damages
and Attorneys' Fees

(Filed April 25, 1969)

COME NOW the defendants, Brotherhood of Locomotive
Engineers, et al., pursuant to Florida Statute 60.07, and
move the Court for an Order assessing costs, damages and
attorneys' fees under the Injunction Bond posted by plain-

tiff, as a result of the wrongful issuance of the Order for Temporary Injunction, dated May 3, 1967.

MILLEDGE AND HORN,

Attorneys for Defendants,

150 S. E. Second Avenue

Miami, Florida 33131

By RICHARD L. HORN

[Certificate of Service omitted in printing.]

HANDWRITTEN ANSWER—MAY 23, 1969

IN THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 67-335-CIV-J

ATLANTIC COAST LINE
RAILROAD COMPANY,
a Corporation,

Plaintiff

- vs -

BROTHERHOOD OF
LOCOMOTIVE ENGINEERS,
et al.

Defendants

ANSWER

Come now the defendants
Brotherhood of Locomotive
Engineers and J. D. Sims, and
Joe Answer to the Complaint
say:

FIRST DEFENSE

The Complaint fails to
41

state a claim upon which relief can be granted.

SECOND DEFENSE

The Norris-LaGuardia Act, 29 U.S.C. § 101 et seq., deprives this Court of the power to grant injunctive relief.

THIRD DEFENSE

The conduct alleged in the Complaint is legal under controlling federal law. Railway Labor Act, 45 U.S.C. § 151 et seq.; Clayton Act, 29 U.S.C. § 52.

As and for answer
the complaint defendants say:

1. The allegations of
paragraph 1 are admitted.

2. The allegations of
fact contained in paragraph
2 are admitted, however
all conclusions of law in
said paragraph are denied.

3. The allegations of
paragraph 3 are admitted.

4. The allegations in
the first and second sentences
of paragraph 4 are admitted.

All the remaining allegations
are denied.

5. The allegations of paragraph 5 of the Complaint are admitted

6. The allegations of paragraphs 6 through 11 of the Complaint are denied.

7. All allegations of the Complaint not specifically admitted are denied.

MILLEDGE AND NEWMAN
ATTORNEYS for Defendants
1300 Northeast Highway 11
Miami, Florida 33131

Richard L. Horn

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer was
(4)

delivered this 23rd day of
May 1969 to Rogers, Towers,
Bailey Jones and Gay, 13th
Floor Florida Title Building,
Jacksonville, Florida.

Richard L. Horn

IN THE
 UNITED STATES DISTRICT COURT
 FOR THE MIDDLE DISTRICT OF FLORIDA
 JACKSONVILLE DIVISION
 Case No. 69-351-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
 DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE
 ENGINEERS; J. E. EASON, individually and as official of
 said Brotherhood; H. M. SAWYER, individually and as a
 member of said Brotherhood; W. K. MORRIS, individually
 and as a member of said Brotherhood, and G. Q. RUT-
 LAND, member of said Brotherhood and G. Q. RUTLAND,
 individually and as a member of said Brotherhood,

Defendants.

Petition for Removal

(Filed May 23, 1969)

*To the Judges of the United States District Court for the
 Middle District of Florida:*

The Petition of Brotherhood of Locomotive Engineers;
 Local Lodge Division 823 of the Brotherhood of Locomo-
 tive Engineers; J. E. Eason; J. D. Sims; H. M. Sawyer;
 W. K. Morris and G. Q. Rutland; respectfully shows:

1. On the 27th day of April, 1967, an action was commenced against Petitioners in the Circuit Court, in and for the Fourth Judicial Circuit of Florida, styled *Atlantic Coast Line Railroad Company, a corporation, Plaintiff, vs. Brotherhood of Locomotive Engineers, et al., Defendants*, Case No. 67-3536, by the filing of a complaint against petitioners, a copy of which is attached hereto. True copies of all process, pleadings and orders filed in said cause are attached hereto.

2. On April 27, 1967, petitioners removed said cause to this Honorable Court and on the same date hearing was held on respondent's Motion to Remand to the state court. This Court entered its order on that date remanding the cause to the state court. Case No. 67-338-Civ-J.

3. Upon remand on May 1, 1967, the state court took testimony substantially identical to that taken by this Court in Case No. 67-335-Civ-J. *Atlantic Coast Line R.R. Co. vs. Brotherhood of Locomotive Engineers, et al.*

4. On the 3rd day of May, 1967, an order was entered in said state court action entitled "Order for Temporary Injunction" against petitioners, a copy of which order is attached hereto.

5. On May 22, 1967 petitioners again removed said cause to this Honorable Court. On July 6, 1967 this Court entered its Order again remanding the cause to the state court. Case No. 67-418-Civ-J.

6. On April 25, 1969, after the decision of the United States Supreme Court in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, — U.S. —, 89 S. Ct.

1109 (decided March 25, 1969; rehearing denied May 5, 1969) petitioner Brotherhood of Locomotive Engineers moved for the dissolution of the "Order for Temporary Injunction" in the state court.

7. By a statement of counsel in open Court at the hearing on Petitioner's Motion to Dissolve on May 23, 1969, the respondent for the first time disavowed its reliance *solely* upon state law and placed reliance upon federal law in the state court action to support the injunction, thus making it first ascertainable that the case was one which was or had become removable under 28 U.S.C. §1446(b).

8. The action herein sought to be removed is a civil action of which it now appears for the first time that this Court has original jurisdiction under the provisions of 28 USC, Sections 1331 and 1337, in that it appears from the foregoing statement of counsel that this cause is a civil action arising under one or more of the following Acts of Congress regulating commerce: Railway Labor Act 45 U.S.C. §151 et seq.; Clayton Act, 29 U.S.C. §52; Interstate Commerce Act, 49 U.S.C. §1 et seq. In addition, the matters in controversy arise under the Constitution and laws of the United States, and the matter in controversy exceeds the sum or value of \$10,000.00 exclusive of interest and costs.

9. The cause is one over which the Court has subject matter jurisdiction, and such jurisdiction is not precluded by the applicability of the Norris-LaGuardia Act. 29 U.S.C. §101 et seq. *Avco Corp. vs. IAM Aero Lodge 735*, 390 U.S. 557, 88 S. Ct. 1235 (1968).

10. Petitioners file herewith a bond with good and sufficient surety conditioned, as provided by Title 28, United States Code, Section 1446 (d), that they will pay all costs and disbursements incurred by reason of the removal proceedings hereby brought should it be determined that this action is not removable or is improperly removed.

WHEREFORE, Petitioners pray that the above action now pending against them in the Circuit Court of the Fourth Judicial Circuit of Florida be removed therefrom to this Court.

MILLEDGE AND HORN,
Attorneys for Defendants
150 S. E. Second Avenue
Miami, Florida 33131

By **ALLAN MILLEDGE**
Allan Milledge

[Jurat and Certificate of Service omitted in printing.]

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
Case No. 69-351-Civ-J.

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,
Defendants.

Motion to Remand
(Filed May 27, 1969)

Plaintiff, Atlantic Coast Line Railroad Company, moves for an order remanding this action to the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, from which it was improperly removed by defendants, and plaintiff states the following grounds for its motion:

1. Removal of this action is improper under 28 U.S.C., §1441.
2. Removal of this action is improper under 28 U.S.C., §1446(b).

3. Plaintiff's action is not one of which this Court has an original jurisdiction founded upon a claim or right arising under the Constitution, treaties or laws of the United States.

4. Plaintiff's action is not one of which this Court has original jurisdiction under 28 U.S.C., §§1331, 1332 or 1337 or under any law of the United States regulating trade or commerce.

5. By Order dated April 27, 1967, in Case No. 67-338-Civ-J and by Order dated July 6, 1967, in Case No. 67-418-Civ-J, this Court remanded this identical action to State Court and decided adverse to petitioners on all issues raised by the Petition for Removal now before the Court.

6. At the stage in this case when the subject Petition for Removal was filed, no new or different fact, order, motion or pleading had occurred or had been entered into since the date of the prior orders remanding this case to State Court from which jurisdiction in this Court now appears.

7. As appears from the Excerpt of Proceedings attached to the Stipulation of the parties filed herein, from said Stipulation and from the Affidavit in Support of Motion to Remand, the following facts show that defendants' Motion for Removal is improper:

(a) At a hearing before the Honorable Charles A. Luckie in *Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers, et al.*, No. 67-3536, on May 23, 1969, the plaintiff argued in the alternative in defense to defendants' Motion to Dissolve the Temporary Injunction previously entered by Judge Luckie, that the Railway Labor

Act if applied in accordance with defendants' position was unconstitutional under the United States Constitution.

(b) After discussions on the record concerning the possibility of removal of this cause and after a short recess, plaintiff in open Court withdrew any arguments under the United States Constitution and announced that they waived their right to raise such arguments subsequently at either the trial or appellate level in this case.

(c) Defendants filed the Petition for Removal here in question subsequent to the withdrawal by plaintiff of any argument under the United States Constitution.

8. This case does not involve the same legal issues as those which were before the Court in Case No. 67-335-Civ-J. The case here at this stage in the pleadings involves the legality and enjoinability of defendants' conduct under the laws of the State of Florida; whereas, Case No. 67-335-Civ-J involved those legal issues under Federal law.

Dated this 27th day of May, 1969.

ROGERS, TOWERS, BAILEY, JONES & GAY

By FRANK X. FRIEDMANN, JR.

Frank X. Friedmann, Jr.

1300 Florida Title Building

Jacksonville, Florida

Attorneys for Plaintiff

[Certificate of Service omitted in printing.]

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 69-351-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation;*Plaintiff,**v.*

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,

Defendants.

Order

(Filed May 28, 1969)

After due notice and hearing, it is

ORDERED:

Plaintiff's Motion to Remand is granted, and this action is remanded to the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida.

DONE AND ORDERED at Jacksonville, Florida, this 28th day of May, 1969.

WM. A. McRAE, JR.

Judge

**Extracts from Transcript of Proceedings on
Motion to Dissolve Injunction**

**IN THE
CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT**

IN AND FOR DUVAL COUNTY, FLORIDA

No. 67-3536

Division E

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

VS.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,

Defendants.

**STATE OF FLORIDA)
COUNTY OF DUVAL)**

A Hearing in the above-entitled matter was held before His Honor, Charles A. Luckie, Judge of the above Court, Thursday, May 29, 1969, at 2:00 p.m.

Appearances:

**DAVID M. FOSTER, Esq., FRANK FRIEDMANN, Jr., Esq.,
and JOHN B. CHANDLER, Jr., Esq., of the law firm of**

Rogers, Towers, Bailey, Jones & Gay, attorneys for plaintiff.

ALLAN MILLEDGE, Esq., and RICHARD HORN, Esq., of the law firm of Milledge & Horn, attorneys for defendants.

[29]

Mr. Foster: . . .

Now, obviously, in this opinion, which Your Honor has just gone through with Mr. Milledge very carefully, the Court based a great deal of reliance on the fact that the Jacksonville Terminal Company was an integral part of the [30] FEC operations, and we don't see how any Court could find that that is true as to the Moncrief Yard. We feel that the situation in a large part in the Terminal Company case is modeled on that conclusion.

[34]

Mr. Friedmann: . . .

First, I believe they are asking this Court to view the decision of the Supreme Court in *Trainmen versus Terminal Company* somewhat in the nature of a law review article to the extent that they spend some 10 or 12 pages discussing the Labor Management Relations Act, and discussing what is and what is not a common situs, and totally disregard that discussion and the conclusions they arrived at in this discussion.

Secondly, I believe they are asking this Court to believe or to hold that the present United States Supreme [35] Court believes or feels that it is incapable of making decisions in this area. I believe the history of the Court—

The Court: I don't believe I should go on record as giving my opinion of the Supreme Court.

Mr. Friedmann: All right, sir.

Secondly or thirdly, I think that the defendants are asking this Court to adopt what to us is a totally illogical position, and to adopt a position which I am sure this Court has never in its experience been faced with before, and that is that by inactivity the Congress of the United States has totally excluded the application of State law in the area.

The Court: Isn't that what this said?

Mr. Friedmann: Your Honor, I would respectfully submit that is not what the Court says if we carefully and closely examine the opinion, and if we make every section of that opinion mean something and have some purpose in arriving at the final conclusion, and with the Court's permission, I would submit and offer to this Court our opinion as to what the Supreme Court actually concluded, and the purpose of the various sections of this opinion in reaching that conclusion.

[40]

What the Supreme Court has in fact held up to this point in the decision is that the picketing of Terminal Company was common situs picketing under the docket of Moore Dry Dock and I do not believe there can be any question that the Court wasted its explanation of common situs picketing, or know to that—know what they in fact concluded.

[41] I think it is also clear that the Supreme Court, as the defendants have argued throughout this case, found that FEC and Terminal Company were related corporations. As we argued before, I believe the Supreme Court viewed the Terminal Company as a subsidiary of the FEC, who was involved in day-to-day operations of that railroad carrier.

The conclusion that the Terminal Company's property is a common situs, and the conclusion that the Terminal Company is related to the FEC, we believe led the Supreme Court to find that in fact the Terminal Company was a party or party to the FEC Brotherhood dispute, and that being related they had in fact had the benefit of the Railway Labor Act procedures, and that therefore they were subject to be picketed by the striking employees of FEC.

[44]

To determine whether or not the Seaboard Coast Line or the ACL on the date of this Court's temporary injunction was a party to the dispute, we only have to make reference to the defendants' argument wherein the defendants candidly admit we have no availability to the Railway Labor Act procedure. We are in no way involved in this dispute between the FEC and its employees, and as Mr. Foster has pointed out, we are not factually involved in the day-to-day operation of FEC. We are not Terminal Company. Moncrief Yard is not the Terminal Company, and we are or we respectfully submit we are in no way a party to this dispute, and, therefore, the reason the Supreme Court does not apply to this in the doctrine of Giboney. A well-reasoned opinion we would submit does apply, and in this Court can still prohibit conspiracy and restraint of the trade in the territorial boundaries of the State of Florida. That this Court can [45] still apply the mandate of Florida law that this activity is illegal.

[47]

Mr. Milledge:

Now, Mr. Foster, has said that a Court could not find that Moncrief Yard was a common situs, or I forget the

exact terms, but the day-to-day operations. I don't want to misquote him, exactly what he says.

In any event, in Judge McRae's original order denying the Federal injunction in Paragraph 5 of his findings of fact the use of ACL's Moncrief Yard by FEC [48] to receive and deliver freight is an integral and necessary part of FEC's operations.

[52]

Mr. Friedmann: I might follow that with one very short point, Your Honor, merely by reading again what Mr. Mill-edge just read to this Court, and I quote that in the absence of any other viable guidelines we have resorted to the LMRA for assistance in mapping out very general boundaries of self-help under the Railway Labor Act.

The Supreme Court in looking to Labor Management Relations Act found Terminal Company to be a common situs, and therefore to be a party to this dispute.

We respectfully submit that in mapping out the very [53] general boundaries of self-help under BLE that the Supreme Court did in fact draw the boundary at Terminal Company, and that those very general guidelines do not apply to picketing of Moncrief Yard owned by Seaboard Coast Line.

Letter Opinion of Luckie, J.

June 3, 1969

Rogers, Towers, Bailey, Jones & Gay, Esquires
1300 Florida Title Building
Jacksonville, Fla. 32202

Attn: David M. Foster

Gentlemen:

Re: Atlantic Coast Line
Railroad Company vs.
B.L.E., etc.

I find it very difficult to reconcile the final conclusion made by the Court in the case of the Brotherhood of Railway Trainmen vs. Jacksonville Terminal Company; and impossible to do so unless the conclusion is confined to the particular case then before that Court. The court concludes its opinion by making the flat statement that, "• • • until Congress acts, picketing—whether primary or secondary—must be deemed conduct protected against state proscription." But it is quite apparent from the remainder of the opinion that the Court did not intend to say that ALL secondary picketing is "conduct protected against state proscription."

The opinion contains the following statements: "We are presented, then, with the problem of delineating the area of labor combat protected against infringement by the States." It further states: "It is difficult to formulate many generalizations governing common situs picketing, but it is clear that secondary employers are not necessarily

protected against picketing aimed directly at their employees." And, " . . . to condemn all of the petitioners' picketing which carries any 'secondary' implications would be to paint with much too broad a brush." Also, " . . . the Railway Labor Act permits employees to engage in SOME forms of self-help, free from state interference, IBID." further, " . . . it cannot categorically be said that ALL picketing carrying 'secondary' implications is prohibited, Part VII, SUPRA," (Emphasis by underscoring supplied; Court emphasis by Capitalization.)

Therefore, the Court having plainly indicated that some forms of secondary picketing may be prohibited by the States, I cannot reconcile the flat statement first quoted in this letter with the remaining statements in the opinion unless I conclude that the flat statement made by the Court related only to the facts before it in that particular case. Consequently, the motion to dissolve the injunction will be denied and, at the request of counsel for the Defendants, the injunction will be made permanent. Please consult Allan Milledge and prepare such Order.

Very truly yours,

CHARLES A. LUCKIE

CAL:bs

cc: Milledge and Horn, Esquires

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

Case No. 67-335-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,

Defendants.

Motion for Preliminary Injunction

(Filed June 4, 1969)

COME NOW the defendants, Brotherhood of Locomotive Engineers, et al., and move the Court for a preliminary injunction enjoining the plaintiff, Atlantic Coast Line Railroad Company (merged predecessor of Seaboard Coast Line Railroad Company) its agents, servants, employees and attorneys and all persons in active concert and participation with them, pending the final hearing and determination of this action, from enforcing, giving effect to or availing themselves in any manner whatsoever of the benefits of the Order for Temporary Injunction that was entered on May 3, 1967 in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, being

numbered Case No. 67-3536, Division E, and for grounds would show:

1. On April 25, 1967 the plaintiff commenced this action by filing its Complaint in this Court seeking an injunction against the picketing activities of the defendants pursuant to their major dispute under the Railway Labor Act with the Florida East Coast Railway Company.

2. On April 26, 1967 this Court entered its Order Denying Application for Temporary Injunctive Relief, which Order made Findings of Fact and Conclusions of Law from the evidence, establishing the applicable federal law of this case.

In said Order, this Court expressly stated:

"1. This suit arises under the Railway Labor Act, 45 U.S.C. §151 et seq., and the Interstate Commerce Act, 49 U.S.C. §1 et seq. *This Court has jurisdiction of the case under 28 U.S.C. §1337.*"

3. Following the denial of injunctive relief by this Court, the plaintiff commenced suit in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, Case No. 67-3536, seeking the same injunctive relief but allegedly relying upon state law to obtain such relief.

4. On May 3, 1967 the state court entered its Order for Temporary Injunction enjoining the picketing activities of defendants as in violation of Florida state law.

5. The United States Supreme Court in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, —

U.S. —, 89 S. Ct. 1109 (decided March 25, 1969, rehearing denied May 5, 1969) established that the controlling federal law, in the circumstances of this case:

“ . . . is to allow parties who have unsuccessfully exhausted the Railway Labor Act's procedures for resolution of a major dispute to employ the full range of whatever peaceful economic power they can muster, so long as its use conflicts with no other obligation imposed by federal law. Hence, until Congress acts, picketing—whether characterized as primary or secondary—must be deemed conduct protected against state proscription.” 89 S. Ct. at 1123.

6. Although the United States Supreme Court has proscribed the application of state law in the circumstances of this case, and although this case remains pending before this Court on the issues of the application of federal law to this case, and although this Court by its Order of April 26, 1967, has concluded that it has jurisdiction of this case and has made binding determination of federal law, the defendants now seek to impeach the Findings of Fact and the Order of this Court by seeking to continue and give effect to the state court injunctive order.

7. This Court has jurisdiction to enter its injunction against the plaintiff as it is here necessary in aid of the Court's jurisdiction, and to protect and effectuate the judgment of this Court dated April 26, 1967. 28 U.S.C. §2283; *United Industrial Workers of the Seafarers International Union v. Board of Trustees of Galveston Wharves*, 400 F. 2d 320 (5th Cir. 1968); *Capital Service, Inc. v. NLRB*, 347 U.S. 501, 74 S. Ct. 699, 98 L. Ed. 887 (1954).

8. Unless restrained by the Court, plaintiff will seek to enforce and effectuate the state court injunction.

9. Such action by the plaintiff will result in continuing irreparable injury, loss and damage to the defendants, who have already been unlawfully denied the use of their peaceful economic weapons in their major dispute with the Florida East Coast Railway Company for two years.

WHEREFORE, defendants pray that the Court enter its Preliminary Injunction, enjoining the plaintiff, its agents, servants, employees and attorneys and all persons in active concert and participation with them, pending final hearing and determination of this action from enforcing, giving effect to or availing themselves in any manner of the benefits of the Order for Temporary Injunction dated May 3, 1967 of the Duval County Circuit Court in Case No. 67-3536.

MILLEDGE AND HORN,

Attorneys for Defendants,

1300 Northeast Airlines Building
150 S. E. Second Avenue
Miami, Florida 33131

By ALLAN MILLEDGE

[Jurat and Certificate of Service omitted in printing.]

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-335-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

v.

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS; et al.,**

Defendants.

Notice of Voluntary Dismissal

(Filed June 6, 1969)

Plaintiff hereby gives notice that it voluntarily dis-
misses this action pursuant to Rule 41(a)(1), Federal
Rules of Civil Procedure.

Motion for Voluntary Dismissal

Plaintiff moves for an order dismissing this action
upon the voluntary motion of plaintiff pursuant to Rule
41(a)(2), Federal Rules of Civil Procedure.

ROGERS, TOWERS, BAILEY, JONES & GAY

By /s/ FRANK X. FRIEDMANN, JR.

Frank X. Friedmann, Jr.

1300 Florida Title Building

Jacksonville, Florida 32202

ADAM G. ADAMS, II

ADAMS & ADAMS

Barnett Bank Building

Jacksonville, Florida 32202

JOHN S. COX

COX & WEBB

630 American Heritage Life Building

Jacksonville, Florida 32202

Attorneys for Plaintiff

[Certificate of Service omitted in printing.]

Notice of Voluntary Dismissal

(Title Page 1)

*Plaintiff hereby gives notice that it voluntarily dis-
misses this action pursuant to Rule 41(a)(1), Federal
Rules of Civil Procedure.*

Notice for Voluntary Dismissal

*Plaintiff moves for an order dismissing this action
upon the voluntary motion of plaintiff pursuant to Rule
41(a)(1), Federal Rules of Civil Procedure.*

Hogans, Towers, Barker, Jones & Gay

By /s/ Frank X. Friedmann, Jr.

Frank X. Friedmann, Jr.

1300 Florida Title Building

Jacksonville, Florida 32202

**Extract from Transcript of Proceedings on Defendants'
Motion for Temporary Injunction**

**IN THE
UNITED STATES DISTRICT COURT
IN AND FOR THE MIDDLE DISTRICT OF FLORIDA**

JACKSONVILLE DIVISION

Case No.: 67-335-Civil-J

ATLANTIC COAST LINE RAILROAD COMPANY,

Plaintiff,

—VS.—

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS, et al.,**

Defendants.

**Taken before THE HONORABLE WILLIAM A. McRAE, JR.,
United States District Judge, commencing at 10:30 o'clock
a.m. on Friday, June 6, 1969, in Open Court.**

MOTION FOR VOLUNTARY DISMISSAL BY PLAINTIFF

DEFENDANT'S MOTION FOR PRELIMINARY INJUNCTION

Appearances:

FRANK X. FRIEDMAN, JR., Esq.

**Attorney at Law, of the Law Firm of Rogers,
Towers, Bailey, Jones & Gay, Jacksonville,
Florida; appeared on behalf of the Plaintiff.**

• FRANK X. FRIEDMANN, JR.; Esq.

Attorney at Law, of the Law Firm of Rogers, Towers, Bailey, Jones & Gay, Jacksonville, Florida; appeared also on behalf of the Plaintiff.

• ALLAN MILLEDGE, Esq.

Attorney at Law, of the Law Firm of Milledge & Horn, Miami, Florida; appeared on behalf of the Defendant.

RICHARD HORN, Esq.

Attorney at Law, of the Law Firm of Milledge & Horn, Miami, Florida; appeared also on behalf of the Defendant.

[49]

Mr. Milledge: . . .

Now, what have we been involved with, then, with the State Court? Up until this year, it couldn't be categorically said that maybe there wasn't room for an application of State Law to this picketing. Now, it was strenuously argued in the United States Supreme Court, but it has now been decided. Now, they have not gone into the State Court and said, "Your injunction is supportable under Federal Law." They have waived all Federal Law. What they have been telling this Court over here is that, somehow or another, State Law can apply to this conduct; and we know from the decision of the United States Supreme Court—it's very clearly stated—that there is no room for the application of State Law.

Now, what they've been engaged in, then, is essentially a kind of a flim-flam operation, in which they—which it is clear that only Federal Law can apply—that this Court has assumed jurisdiction, to determine Federal Law; and yet they are over here in a State Court, seeking still to apply

State Law, which would, if left alone, come—or might come to a different conclusion—as it already has—to one which we would have in this Court, about [50] the legality or illegality of the conduct involved.

But this Court has jurisdiction—and that's what the injunction is about, is to preserve that jurisdiction, to make the final determination.

Now, just—and I might say Judge Luckie's recent opinion, which is in letter form, is in the file now; we attached all relevant documents by way of an affidavit. And also in the file is the transcript of the hearing. Now, I would refer Your Honor to Page 30, talking about enforcement of determinations made by this Court. They tell Judge Luckie—on Page 29 and 30—I believe this is Mr. Foster—it is Mr. Foster speaking (reading from document):

"Now, obviously, in this opinion which Your Honor has just gone through with Mr. Milledge, when you were speaking of the *B.R.T.* decision, the Court based a great deal of reliance on the fact that the Jacksonville Terminal Company was an integral part of F.E.C. operations, and he—"

The Court: What are you reading from?

Mr. Milledge: Sir? What am I reading from?

[51] The Court: Yes.

Mr. Milledge: I'm reading from a transcript of proceedings before Judge Luckie in Case Number 67-3536—

The Court: Who's doing the talking?

Mr. Milledge: David Foster—whom I don't see here—well, you know Mr. Foster. This is Mr. Foster talking (reading from document):

"... the Court based a great deal of reliance ..."—the Supreme Court, he's speaking of—"... great deal

of reliance on the fact that the Jacksonville Terminal Company was an integral part of F.E.C. operations, and we don't see how any Court could find that this is true as to Moncrief Yard."

Reading from Your Honor's Order of April 26, 1967—in this case—it's Finding of Fact Number 5 (reading from document):

"After an evidentiary hearing, the use of A.C.L.'s Moncrief Yard by F.E.C. to receive and deliver freight is an integral and necessary part of F.E.C.'s operations."

[52] And he's telling Judge Luckie after that finding—and they say now they're willing to have it be final—that no Court could find—he says that, on Page 44 of the same transcript—Mr. Friedmann is speaking; it's about the middle of the page. He says (reading from document):

"As Mr. Foster has pointed out, we are not factually involved in the day-to-day operation of F.E.C."

That's what he's telling Judge Luckie.

Paragraph 4 of the Findings of Fact—of your Findings of Fact is a long one; but it deals with the interchange between F.E.C. and A.C.L. as performed in the Moncrief facility; trains operated by strike replacement crews daily enter and operate in the A.C.L. yard for the purpose of delivering, receiving interchange freight; this interchange traffic averages 420 cars per day, or over 150,000 cars per year. The interchange of freight with A.C.L. constitutes approximately 60 per cent of all freight received and delivered by F.E.C. at its northern terminus.

Well, these are simply illustrations of what it is—really what it is that they are doing, is that they are urging something entirely inconsistent [53] with the Findings of Fact of this Court; and we respectfully submit that the *Galveston* decision is controlling on this question. . . .

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-335-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

v.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; et al.,

Defendants.

**Order Denying Voluntary Dismissal
and Granting Injunction**

(Filed June 20, 1969)

On June 6, 1969, a hearing was held in the above entitled cause upon Defendants' Motion for Preliminary Injunction, filed June 4, 1969, and upon Plaintiff's Notice of Voluntary Dismissal and Motion for Voluntary Dismissal.

It appears that Plaintiff's purported Notice of Voluntary Dismissal is without effect, as Defendants had, prior to Plaintiff's "notice", filed an Answer herein on May 27, 1969. Fed R. Civ. P., Rule 41(a)(1). Furthermore, Plaintiff has failed to show that the Answer was filed merely to foreclose a voluntary dismissal. See *Kohloff v. Ford Motor Co.*, 29 F. Supp. 843 (S.D.N.Y. 1939); *Flaig v. Yellow Cab Co.*, 4 F.R.D. 174 (W.D.Mo. 1944).

As the Court is of the opinion that Defendants' Motion for Preliminary Injunction has merit, Plaintiff's Motion for Voluntary Dismissal under Rule 41(a)(2), Fed. R. Civ. P., will be denied.

Defendants seek to have this Court enjoin Plaintiff from availing itself of the Order for Temporary Injunction entered May 3, 1967, in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, in Case No. 67-3586, Division E. The state court order enjoined the picketing activities of Defendants as against the Plaintiff herein on the ground that the picketing violated state law.

Defendants herein contend that this Court should enter its injunction on the ground that it is necessary in aid of this Court's jurisdiction, and to protect and effectuate the judgment of this Court dated April 26, 1967. 28 U.S.C. § 2283.

Plaintiff argues that *Amalgamated Clothing Workers v. Richman Bros.*, 348 U.S. 511 (1955), requires this Court to allow the state proceedings to continue without interference. Plaintiff's reliance is misplaced, however, for in *Richman* the District Court could issue no injunction in aid of its jurisdiction because the District Court had no jurisdiction to aid. There the District Court's jurisdiction was preempted by that of the National Labor Relations Board. In the instant case, however, this Court has jurisdiction (see Order of April 26, 1967, Conclusion of Law No. 1) and may grant injunctive relief in aid thereof.

In its Order of April 26, 1967, this Court found that Plaintiff's Moncrief Yard, the area in question, "is an integral and necessary part of [Florida East Coast Railway Company's] operations." Finding of Fact No. 5. The Court concluded furthermore that Defendants herein "are now free to engage in self-help." Conclusion of Law No. 3. The injunction of the state court, if allowed to continue in force,

would effectively nullify this Court's findings and delineation of rights of the parties. The categorization of Defendants' activities as "secondary" does not alter this state of affairs. See *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, — U.S. —, 22 L.Ed. 2d 344 (1969). The prohibition of 28 U.S.C. § 2283, therefore, does not deprive this Court of jurisdiction to enter the injunction in this instance. *Capital Service, Inc. v. NLRB*, 347 U.S. 501 (1954); *Brotherhood of Ry. Trainmen v. Board of Trustees of Galveston Wharves*, 400 F.2d 320 (5th Cir. 1968).

It is, therefore,

ORDERED:

1. Plaintiff's Motion for Voluntary Dismissal is denied.

2. Plaintiff, Atlantic Coast Line Railroad Company (merged predecessor of Seaboard Coast Line Railroad Company), its agents, servants, employees and attorneys and all persons in active concert and participation with them, are enjoined from giving effect to or availing themselves of the benefits of the Order for Temporary Injunction entered May 3, 1967, in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, Case No. 67-3536, Division E, pending the final hearing and determination of this action.

DONE AND ORDERED at Jacksonville, Florida, this 19th day of June, 1969.

WM. A. McRAE

Judge

Copies to counsel

UNITED STATES DISTRICT COURT**MIDDLE DISTRICT OF FLORIDA****JACKSONVILLE DIVISION****No. 67-335-Civ-J**

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,***Plaintiff,*****v.****BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE DIVI-
SION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS;
*et al.,******Defendants.***

**Request to Set for Final Hearing and Motion
for Expedited Final Hearing****(Filed June 23, 1969)**

Plaintiff Atlantic Coast Line Railroad Company requests pursuant to Rule 40, Federal Rules of Civil Procedure, that this cause be set down for final hearing and plaintiff moves pursuant to Rule 7 and 8, Rules of the United States District Court, Middle District of Florida, that the period of time from when issue was joined in this cause to final hearing be shortened. In support of its motion to expedite final hearing, plaintiff states:

1. A full evidentiary hearing was had in this cause on April 25, 1967 on plaintiff's application for temporary injunctive relief. The Court held by order dated April 26, 1967, that it did not have jurisdiction to issue a restraining order because this case grew out of a labor dispute subject

to the provisions of the Norris-La Guardia Act, 29 USC §§ 101 et seq.

2. Plaintiff fully presented its evidence at the hearing on April 25, 1967 on the issue of jurisdiction under the Norris-La Guardia Act and that evidence will be admissible at the final hearing in this cause and need not be repeated.

3. The Court enjoined plaintiff by order dated June 19, 1969 "pending the final hearing and determination of this action" from availing itself of the benefits of the Order for Temporary Injunction entered May 3, 1967 in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, in Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers, et al., No. 67-3536, Division E.

4. Therefore, good cause exists for expediting final hearing in this action and for finally determining the merits of plaintiff's Application for Entry of a Permanent Injunction.

MEMORANDUM IN SUPPORT OF REQUEST AND MOTION

The District Courts are given the discretion to establish rules for the setting of cases for final hearing. Rule 40, Federal Rules of Civil Procedure. The Middle District had determined in its discretion that the time between when issue is joined and final hearing may be shortened for good cause shown and that an expedited procedure may be adopted in emergency matters. Rule 7 and 8, Rules of the United States District Court, Middle District of Florida. The plaintiff fully presented its evidence in support of its claim for relief at the hearing on April 25, 1967. This evidence is admissible at final hearing and need not be repeated for the record. Rule 65, Federal Rules of Civil Procedure.

No action was taken in this cause from April 25, 1967 through May 23, 1969. On the latter date defendants filed a handwritten answer to the complaint. Subsequently on June 3, 1969, defendants filed a motion for preliminary injunction which culminated in this Court's order dated June 19, 1969 restraining plaintiff from taking benefit of the Order for Temporary Injunction entered May 3, 1967, in the case between the same parties in state court *based solely on state law*. Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers, et al., Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, Case No. 67-3536, Division E.

On the same day that the defendants' answer was filed, the State Court action was being argued on defendants' motion to dissolve the injunction. During the hearing defendants removed the cause for a third time to federal court. Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers, et al., United States District Court for the Middle District of Florida, Jacksonville Division, Case No. 69-351-Civ-J. This Court granted plaintiff's motion to remand grounded upon lack of original jurisdiction in the federal courts under §§ 1331 or 1337, 28 USC.

In the event this Court is persuaded at final hearing that the Norris-La Guardia Act, 29 USC §§ 101 et seq., constitutes a bar to this Court's "jurisdiction to issue any . . . permanent injunction" (29 USC § 101), then it is respectfully submitted that, as stated by the Fifth Circuit, the Court can "deal only with the enjoynability of [defendants'] activity" in Federal Court and "not with its legality for any other purpose". Brotherhood of Railroad Trainmen v. Atlantic Coast Line Railroad Company, 262 F.2d 649, 653 (5th Cir. 1966). The legality of the subject picketing never comes in issue.

This case ends upon a determination that the Norris-La Guardia Act constitutes a bar to injunctive relief. The plaintiff's complaint neither contains a separate damages count nor prays for compensatory relief. The entry of an order grounded on Norris-La Guardia adverse to plaintiff's application for permanent injunction will establish this Court's lack of jurisdiction. The Federal courts have never enjoined parties from seeking relief in state court to protect non-existent jurisdiction. *Amalgamated Clothing Workers of America v. Richman Bros.*, 348 US 511 (1965); *International Association of Machinists v. United Aircraft Corporation*, 333 F.2d 367 (2d Cir. 1964); *National Labor Relations Board v. Swift & Company*, 233 F.2d 226 (8th Cir. 1956).

It is respectfully submitted that a refusal by this Court to finally determine the cause joined with the Court's Order of June 19, 1969 would result in gross injustice to plaintiff. And, pending final determination of this case defendants may have the power to virtually shut off the State of Florida from rail passenger and freight service.

CONCLUSION

Plaintiff Atlantic Coast Line Railroad Company respectfully submits that this cause should be set down on an emergency basis for final hearing.

Respectfully submitted,

ROGERS, TOWERS, BAILEY, JONES & GAY

By DAVID M. FOSTER

David M. Foster

Frank X. Friedmann, Jr.

John B. Chandler, Jr.

1300 Florida Title Building

Jacksonville, Florida 32202

JOHN S. COX
COX & WEBB
630 American Heritage Life Building
Jacksonville, Florida 32202

ADAM G. ADAMS II
ADAMS & ADAMS
Barnett Bank Building
Jacksonville, Florida 32202

[Certificate of Service omitted in printing.]

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-335-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Plaintiff,

—VS.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS; *et al.*,

Defendants.

Motion to Stay Injunction Order

Dated June 19, 1969

(Filed June 25, 1969)

Plaintiff Atlantic Coast Line Railroad Company moves for the entry of an order staying the effect of the injunction dated June 19, 1969, issued against plaintiff, its agents, servants, employees and attorneys, pending a final hearing in this cause, and for grounds therefor would show:

1. The judge that issued said injunction order is currently hospitalized and is unable to hold a final hearing in this cause.

2. The other judge assigned to this division will be out of the geographic area for a period of thirty days and will

be unable to hold a final hearing prior to the expiration of said period.

8. Plaintiff is further informed that there is no other judge assigned to this Court who would be able to expeditiously hold a final hearing.

4. The Order of June 19, 1969, enjoined, pending a final hearing of this cause, the plaintiff, its agents, servants, employees and attorneys and all persons in active concert and participation with them from giving effect to or availing themselves of the benefits of the Order for Temporary Injunction entered May 3, 1967, in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers, No. 67-3536, Division E.

5. The parties to this action have maintained their positions since the state court Order for Temporary Injunction was entered on May 3, 1967, and defendants have not availed themselves of Florida appellate processes.

6. The changing of the status quo prior to June 19, 1969, pending a final hearing of this cause, as has been shown by the evidence in this action and as the State Circuit Court found in its Order for Temporary Injunction, will cause the plaintiff irreparable harm.

WHEREFORE, plaintiff moves for the entry of an order staying the effect of the injunction contained in the Order of this Court dated June 19, 1969, until such time as a final hearing in this cause may be heard.

MEMORANDUM IN SUPPORT OF MOTION TO STAY

Plaintiff has moved for the entry of an order staying the Order dated June 19, 1969, pending the final hearing of this cause. The basis of this motion is the extraordinary circumstance of non-availability of district judges to conduct a final hearing of this cause.

It is not disputed that irreparable injury will result to the plaintiff if the present positions of the parties to this action, which have remained static since May 3, 1967, are altered prior to a final hearing of this cause. Realizing this, the plaintiff has moved for an expedited final hearing of this cause but has found that such an expedited hearing will not be available to it due to the unavailability of an appropriate judge.

Since it is conceivable that a final hearing in this cause could be delayed for as much as thirty days; and since the evidence submitted in this case shows that picketing for a period of that length would cause irreparable injury, it is respectfully submitted that it is within the discretion of this Court, pursuant to Rule 62(a), Federal Rules of Civil Procedure, to provide for a stay or said injunction of June 19, 1969, until a final hearing in this cause is held.

The applicable portion of Rule 62 is set out as follows:

"Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction . . . shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal." (Emphasis supplied)

Plaintiff contends that the unusual circumstances attending this case make it appropriate for the Court to provide for a stay of this injunction.

Respectfully submitted,

ROGERS, TOWERS, BAILEY, JONES & GAY

By JOHN B. CHANDLER, JR.

David M. Foster

Frank X. Friedmann, Jr.

John B. Chandler, Jr.

1300 Florida Title Building

Jacksonville, Florida 32202

JOHN S. COX

COX & WEBB

630 American Heritage Life Building

Jacksonville, Florida 32202

ADAM G. ADAMS, II

ADAMS & ADAMS

Barnett Bank Building

Jacksonville, Florida 32202

Attorneys for Plaintiff

[Certificate of Service omitted in printing.]

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
No. 67-335-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Plaintiff,

—vs.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,

Defendants.

Motion to Suspend Injunction Pending Appeal

(Filed June 25, 1969)

Plaintiff moves, pursuant to Rule 62(c), Federal Rules of Civil Procedure, and Rule 8, Federal Rules of Appellate Procedure, for the entry of an order suspending the injunction granted by this Court by its Order dated June 19, 1969, pending disposition of the appeal taken by plaintiff in this cause from the entry of said Order. Plaintiff relies upon the following grounds for this motion:

- (1) Unless the motion is granted, the plaintiff is subject to picketing of its rail facilities which will cause a substantial interruption of rail traffic in Jacksonville, Florida, and throughout the State of Florida, causing plaintiff irreparable harm for which there is no adequate remedy at law.
- (2) The granting of the motion will maintain the status quo which has existed since the entry of the Order of Temporary Injunction dated May 3, 1967, by the

Circuit Court in and for Duval County, Florida. During this two year period, the defendants took no steps to have said temporary injunction reviewed by the state appellate courts, having sought review of said injunction for the first time on June 6, 1969, in this Court.

- (3) Plaintiff has filed a Notice of Appeal to the United States Court of Appeals for the Fifth Circuit and will seek an expeditious disposition of that appeal.
- (4) The subject matter of the appeal, involving a grave question of the injection of Federal judicial jurisdiction into the jurisdiction of the courts of the State of Florida, warrants that the plaintiff be afforded the opportunity of appellate review, which opportunity will be effectively denied if a suspension of the injunction is not granted.

ROGERS, TOWERS, BAILEY, JONES & GAY

DAVID M. FOSTER

FRANK X. FRIEDMANN, JR.

JOHN B. CHANDLER, JR.

By JOHN B. CHANDLER, JR.

1300 Florida Title Building

Jacksonville, Florida 32202

COX & WEBB

JOHN S. COX

630 American Heritage Life Building

Jacksonville, Florida 32202

ADAMS AND ADAMS

ADAM G. ADAMS, II

Barnett Bank Building

Jacksonville, Florida 32202

Attorneys for Plaintiff

[Certificate of Service omitted in printing.]

IN THE
UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-335-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS; *et al.,*

Defendants.

**Order Denying Motions to Stay and Suspend Injunction
and Deferring Various Other Motions**

(Filed June 25, 1969)

Upon consideration, it is

ORDERED:

1. The Court defers ruling upon plaintiff's motion to set for final hearing and motion for expedited final hearing, plaintiff's application for entry of permanent injunction and plaintiff's motion to dissolve injunctive order dated June 19, 1969, subsequent to final hearing, until the United States District Judge previously presiding in this case hears said motions, or until July 25, 1969.

2. Plaintiff's motion to stay injunction order dated June 19, 1969, is denied.

3. Plaintiff's motion to suspend injunction pending appeal is denied.

4. Plaintiff's request to Clerk to certify and transmit partial record is hereby amended to include proposed orders numbered 1, 2 and 3, which were filed by the plaintiff during the course of the hearing this date, and to include this order.

DONE AND ORDERED at Jacksonville, Florida, this 25th day of June, 1969.

CHARLES R. SCOTT

Judge

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 28064

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Appellant,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood; and G. Q. RUTLAND, individually and as a member of said Brotherhood,

Appellees.

Application for Stay of Injunction Pending Appeal

(Filed June 25, 1969)

Appellant moves for the entry of an order staying the effectiveness of the District Court's order dated June 19, 1969, pending disposition of this appeal. This application is made pursuant to Rule 8, Federal Rules of Appellate Procedure.

I. FACTS.

The appellant ("ACL") is a railroad common carrier with its principal place of business in Jacksonville, Duval

County, Florida. The appellant furnishes rail service to the bulk of the Florida peninsula in addition to the metropolitan area of Jacksonville, Florida. The Brotherhood of Locomotive Engineers is a labor organization which represents certain employees of the Florida East Coast Railway Company ("FEC"), which employees have been on strike against the Florida East Coast Railway Company since 1966. The individual defendants actively controlled or participated in the picketing and other conduct complained of by appellant. None of the defendants are employees of ACL nor does the defendant, Brotherhood of Locomotive Engineers represent any of the employees of ACL insofar as the subject matter of this litigation is concerned.

Among other rail facilities operated by it, ACL owns and operates a rail car classification and interchange yard in Jacksonville, Florida, known as "Moncrief Yard".

On April 23, 1967, without notice, the defendants began to picket entrances to Moncrief Yard and to disburse letter notices to ACL employees going to work through those entrances. The purpose of the picketing and distribution of letter notices was to cause ACL employees working at Moncrief Yard to refuse to carry out their regularly assigned duties with regard to any ACL rail cars delivered to Moncrief Yard by the FEC and with regard to any ACL cars arriving at Moncrief Yard destined for delivery to FEC. Certain tracks within the Moncrief Yard complex are designated for the placing of cars by ACL employees for pickup by the FEC. Other tracks are designated for the placing of cars by FEC for pickup by ACL. In response to the picketing and letter notices, ACL employees refused to perform their assigned duties at Moncrief Yard with respect to such rail cars while the same were under the control and responsibility of ACL. That effect was brought

about by ACL employees: (1) refusing to break down and classify road trains containing cars destined to the FEC; (2) refusing to build road trains containing cars that had arrived at Moncrief Yard from FEC; and (3) refusing to couple up to or otherwise move cars destined to or arriving from FEC.

No switching, signalling, car repair or other services are performed by ACL at Moncrief Yard for FEC. No FEC employees report to or depart from work at Moncrief Yard. There is no interlocking stock ownership between FEC and ACL. The tracks and real property of FEC and ACL do not adjoin, the same being separated by the tracks and real property of Jacksonville Terminal Company, an intervening carrier. The appellees' picketing was directed to ACL employees performing duties and services for ACL and not to ACL employees performing services for the FEC.

The effect of the response of the ACL employees to the appellees' activity was a total disruption of interchange operations in Moncrief Yard. The rail operations interrupted by appellees included the movement of thousands of rail cars destined to other points within and without Florida on the ACL, disruption of interchange between ACL and the Seaboard Air Line Railway Company, disruption of interchange between ACL and the Southern Railway System, and disruption of switching and delivery of cars by ACL to industrial sites in metropolitan Jacksonville. The foregoing occurred, and in the event of renewed picketing would again take place, because Moncrief Yard serves as the major threat of ACL traffic into and out of the State of Florida, as well as the major facility for the switching and classification of rail cars for the Jacksonville industrial complex served by ACL.

II. PROCEDURAL STATUS OF THIS ACTION AND THE RELATED STATE COURT ACTION.

An understanding of the issues in this appeal requires a consideration of the instant federal court action, as well as a subsequent state court proceeding.

A. Federal Court Action.

On April 25, 1967, ACL commenced this action in the United States District Court for the Middle District of Florida. The theories upon which that complaint was founded were that the conduct of appellees: (a) had induced the ACL employees to violate the provisions of the Railway Labor Act, 45 USC 151, et seq., by refusing to work without first exhausting the dispute resolving procedures of that Act; and (b) was in violation of the Interstate Commerce Act, 49 USC 1(4), 1(11), 1(15), 1(17) and 3(4) in that the ACL was prevented from carrying out its duties under that Act.

After a full evidentiary hearing before District Judge William A. McRae, Jr., ACL applied for the issuance of a temporary injunction. On April 26, 1967, District Judge McRae entered an order denying ACL's application for a temporary injunction. The Court found that the picketing in question would cause "severe congestion" of the Moncrief Yard, but the Court held that it was deprived of jurisdiction to grant injunctive relief by virtue of the provisions of the Norris-LaGuardia Act, 29 USC § 101, et seq.

B. Subsequent State Court Action.

On April 27, 1967, ACL filed a complaint in the Circuit Court of Duval County, Florida. That complaint, based solely on alleged violations of the laws of the State of Florida, sought to have enjoined the picketing and the

distribution of letter notices at Moncrief Yard. After hearing evidence presented by both parties, Circuit Judge Charles A. Luckie entered an order for temporary injunction dated May 3, 1967, based upon violation of state law.

C. Removal Efforts as to the State Court Action.

On April 27, 1967, the appellees removed the action pending in the Circuit Court of Duval County, Florida, to the District Court for the Middle District of Florida. On April 27, 1967, pursuant to ACL's motion to remand, that action was remanded to the state court. Again, on May 23, 1967, the defendants removed the pending state court action to the District Court for the Middle District of Florida. Similarly, after argument before Judge McRae, the action was once more remanded to the state court. As late as May 23, 1969, the defendants sought to remove the state court action a third time. The petition was filed several minutes after the conclusion of a hearing in state court. The action was remanded May 28, 1969. It may safely be assumed that in both instances the federal court remanded because it found that the state court action involved neither any issues of federal law nor diversity of citizenship between the parties.

D. Dormancy of Federal and State Court Actions.

From April 26, 1967, when District Judge McRae denied the plaintiff's application for temporary injunctive relief, no action was taken by either party to prosecute or otherwise dispose of the instant federal court action until the defendants filed their handwritten answer to the complaint on May 23, 1969. Except for the second removal effort discussed above, and except for ACL's filing of interrogatories to prevent dismissal of the action for want of prosecution,

no action was taken by either party in the state court action from May 3, 1967, when Circuit Judge Luckie entered the order for temporary injunction, until April 25, 1969, when the appellees filed their motion to dissolve the state court temporary injunction.

E. *Application for Dissolution of Temporary Injunction in State Court.*

On April 25, 1969, the defendants filed before Circuit Judge Luckie a motion to dissolve the state court temporary injunction. That motion was founded upon the decision in *Trainmen v. Terminal Company*, — U. S. —, 22 L.Ed. 344, 89 S. Ct. 1109 (1969). Argument was held on that motion before Circuit Judge Luckie on May 23, 1969, and again on May 29, 1969. Subsequently, Circuit Judge Luckie announced, by letter to counsel for all parties, his intention to deny defendants' motion to dissolve the state court temporary injunction. Circuit Judge Luckie advised that the factual distinctions between the action pending before him and the facts presented in *Trainmen v. Terminal Company*, *supra*, warranted a different result. That action is still pending in the Circuit Court of Duval County, Florida. The defendants have taken no affirmative steps to seek appellate review of the Circuit Court's action.

F. *Appellees' Motion for Temporary Injunction Pending Final Disposition of the Federal Court Action and ACL's Attempt to Dismiss the Federal Court Action.*

On June 3, 1969, the appellees filed in the District Court action a motion for entry of a temporary injunction against the ACL and its agents and attorneys from giving effect to or availing themselves of the benefits of the state court temporary injunction "pending the final hearing and de-

termination of" this federal court action. Immediately thereafter, ACL filed its motion for leave to voluntarily dismiss the action together with its notice of voluntary dismissal. Argument was heard on those motions before District Judge McRae on June 6, 1969. In the course of that hearing, appellant offered to submit to a dismissal of the action with prejudice.

G. Order of District Court Denying Application for Dismissal and Granting Appellees' Motion for Temporary Injunction.

On June 19, 1969, District Judge McRae entered an order denying ACL's application for dismissal of the action and "enjoining" ACL and its agents and attorneys from giving effect to or availing themselves of the benefit of the state court temporary injunction "pending the final hearing and determination of" the federal court action. Appellees' motion for entry of a temporary injunction was not specifically ruled upon.

H. ACL's Application for Dissolution of the June 19, 1969, Injunctive Order; ACL's Request to Set for Final Hearing; ACL's Motion for Expedited Final Hearing; and ACL's Application for Permanent Injunction.

On June 23, 1969, ACL moved the District Court to dissolve the June 19, 1969, injunctive order. At the same time, ACL moved to have the action set for final hearing on an expedited basis and applied for entry of a permanent injunction. After a hearing before District Judge Charles R. Scott on June 25, 1969, at which the appellees objected the matter coming on for final hearing, the District Court declined to rule upon those ACL motions, so that ACL has effectively been denied a final adjudication of this action.

I. Order of District Court From Which This Appeal Is Taken.

District Judge McRae's June 19, 1969, injunctive order (subparagraph G, above) is the order from which this appeal is taken.

J. Application to District Court for Suspension of Injunction.

On June 25, 1969, appellant made application to District Judge Scott for an order suspending the effect of the June 19, 1969, temporary injunction pending a determination of this appeal. By its Order dated June 25, 1969, the District Court denied that motion for suspension of the injunction.

III. ARGUMENT.

The District Court's Order dated June 19, 1969, enjoining appellant from availing itself of the benefits of the existing State Court temporary injunction: (1) will have the effect of subverting the appellate review procedures of the courts of the State of Florida and be tantamount to a federal court ouster of state judicial power; and (2) can only serve the purpose of protecting non-existent jurisdiction since appellant's application for a temporary injunction has been denied on the ground that the District Court did not have "jurisdiction to issue any . . . injunction" because this is a case "involving or growing out of a labor dispute . . ." 29 U.S.C. § 101.

The provisions of Section 2283, 28 U.S.C., were not designed to protect non-existent federal jurisdiction or to provide federal courts a medium to control the application of state law by state courts. *Amalgamated Clothing Workers of America v. Richman Bros.*, 348 U.S. 511 (1965). Further, if the District Court was without jurisdiction un-

der the Norris-LaGuardia Act (29 U.S.C., §§ 101, et seq.) to prohibit the subject picketing by injunction, then it is likewise without jurisdiction to prevent the appellant from exercising "self help" by seeking a state court injunction.

A. Subsequent to Final Determination of This Cause, Section 2283, 28 U.S.C., Does Not Authorize an Injunction Restraining Appellant From Availing Itself of a State Court Injunction Based Solely Upon State Law.

This case was heard on the merits by the District Court on April 25, 1967, upon appellant's application for temporary injunction. The appellees' position was that this case involved or grew out of a labor dispute and that, therefore, the District Court was without jurisdiction to issue an injunction. 29 U.S.C. § 101. The Order Denying Application for Temporary Injunction dated April 26, 1967, so held.

In the order denying appellant temporary injunctive relief, the District Court dealt "only with the enjoynability of appellant's activity [under Norris-LaGuardia] and not with its legality for any other purpose". *Brotherhood of Railroad Trainmen v. Atlantic Coast Line Railroad Company*, 362 F.2d 649, 653 (5th Cir. 1966). As stated by the Fifth Circuit:

"In Norris-LaGuardia, Congress did not . . . make the conduct listed lawful for all purposes. The most logical inference from this fact is that in Norris-LaGuardia Congress intended only to remedy abuses of judicial equity power relating to injunctions, allowing the law relating to the 'legality' of the described activity for other purposes to develop in the courts." 362 F.2d at 653, fn. 3 (Emphasis Added).

The District Court cannot properly determine the legality of the picketing unless it has jurisdiction to act under the Norris-LaGuardia Act, and the District Court did not have original federal jurisdiction to determine the legality of the conduct under state law in the case which appellees seek to enjoin. That point is plainly evidenced by the three instances in which the state court action was remanded by the District Court. The legality of the picketing under state law is a decision which should be made by the state court subject to appropriate appellate review. The integrity of Florida's judicial system should not be subverted by an order which has the effect of prohibiting the state court from acting.

The appellees' position on the merits in state court is that state law is totally pre-empted by virtue of the decision in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Company*, — U.S. —, 22 L.Ed.2d 344, 89 S.Ct. 1109 (1969). Appellant's position in state court is that the doctrine of *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949), applies in this instance giving the Florida Circuit Court power to enjoin the picketing under the law of the State of Florida. *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Company*, *supra*, 22 L.Ed.2d at 363, fn. 25.

Appellant's argument in state court was that the United States Supreme Court in the *Terminal Company* case held: (1) Terminal Company was a common situs subject to primary picketing with secondary implications; this conclusion was arrived at by drawing an analogy from the case law under Section 8(b)(4) of the Labor Management Relations Act, 29 U.S.C., § 158(b)(4); (2) Terminal Company and FEC were related corporations (that is, had integrated operations and ownership); (3) Terminal Company was in

fact a party, as that term is defined in the Railway Labor Act, 45 U.S.C., §§ 151, et seq., to the FEC-Brotherhood labor dispute (which dispute had run the course of the administrative procedures of the Railway Labor Act); (4) the United States Supreme Court concluded that the Terminal Company as a party to a labor dispute was subject to self-help activity by the Brotherhood; (5) ACL is not related to FEC and Moncrief Yard is not a common situs; (6) the United States Supreme Court in *Terminal Company* did not hold that Congress by total inaction in the Railway Labor Act pre-empted the application of all state law in non-violent picketing situations; and (7) where, as here, the picketed employer is not a "party" to the labor dispute, the rule of *Giboney v. Empire Storage & Ice Company*, *supra*, applies and the state court is free to apply state law.

If a federal court finds that it is without jurisdiction to act and consequently cannot reach the question of the legality of the conduct under federal law and hold that it is without original jurisdiction to consider an action pending in the state court, the federal court does not have the power to protect non-existent jurisdiction and enjoin the state court action. *Amalgamated Clothing Workers of America v. Richman Bros.*, *supra*; *International Association of Machinists v. United Aircraft Corporation*, 333 F.2d 367 (2nd Cir. 1964); *National Labor Relations Board v. Swift & Company*, 233 F.2d 226 (8th Cir. 1956). Further, the federal court should evidence that confidence in the state trial and appellate systems which has been traditionally shown by the federal courts and should avoid conflicts with or exercising control over the state courts' exercise of judicial duties.

B. Subsequent to Final Determination of This Cause, the Norris-LaGuardia Act, 29 U.S.C., § 101, Prohibits the Entry of an Injunction Which Mandatorily Enjoins Appellant to Allow the Subject Picketing and to Refrain From Self-Help.

The appellees' position in this case has been that the District Court is without jurisdiction to enjoin the subject picketing because the ACL and the appellees are parties to a labor dispute. If the federal courts cannot prohibit the activity in question under Norris-LaGuardia Act on the ground that ACL is a party to a labor dispute, then the plain language of the Act likewise prohibits the Court from permitting the picketing or prohibiting the appellant from engaging in "self-help". 29 U.S.C., § 101.

The unfairness of permitting the subject picketing by mandatory injunction upon the application of the appellees, while denying appellant an opportunity to contrary judicial relief, is apparent. To do so clearly brings into issue whether the Norris-LaGuardia Act in this instance so discriminates between parties, similarly situated, by denying only one the right to apply to the federal courts for relief, that the Act violates the due process clause of the Fifth Amendment to the United States Constitution. *Schneider v. Rusk*, 377 U.S. 163 (1964); *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Republic Pictures Corporation v. Kappler*, 151 F.2d 543 (1945), *aff'd* 327 U.S. 757 (1946), *reh. den.* 327 U.S. 817 (1946); *Swick v. Glenn L. Martin Co.*, 68 F.Supp. 863 (1946), *aff'd* 160 F.2d 483 (1947), *cert. den.* 332 U.S. 772 (1947).

C. The Emergency Nature of this Appeal Merits the Entry of the Stay Requested by Appellant.

Unless the motion is granted, the appellant is subject to picketing of its rail facilities which will cause a substantial

interruption of rail traffic in Jacksonville, Florida, and throughout the State of Florida, causing appellant and the public irreparable harm for which there is no adequate remedy at law. The granting of the motion will maintain the status quo pending a final determination of the rights of the parties. During the two year period since the state court temporary injunction was entered, the appellees took no steps to have that temporary injunction reviewed by the Florida appellate courts, having sought review of that injunction for the first time on June 6, 1969, in the District Court below. The appellees have made no showing that irreparable harm will be sustained by them during a stay of the temporary injunction. The subject matter of the appeal, involving a grave question of the injection of federal judicial jurisdiction into the jurisdiction of the courts of the State of Florida warrants that the appellant be afforded the opportunity of appellate review. That opportunity will be effectively denied if a suspension of the injunction is not granted.

IV. CONCLUSION.

In the event a stay is not granted, a practical opportunity will not exist to test the District Court. June 19, 1969, Order. One week, perhaps one day, of picketing of Moncrief Yard will shut down ACL rail freight services to Florida. The Brotherhood has waited two years to picket; two weeks will not harm their cause. Therefore, it is respectfully submitted that the Motion to Stay Temporary Injunction Pending Appeal should be granted.

Respectfully submitted,

DAVID M. FOSTER

FRANK X. FRIEDMANN, JR.

JOHN B. CHANDLER, JR.

DAVID M. FOSTER

1300 Florida Title Building

Jacksonville, Florida 32202

Of Counsel:

ROGERS, TOWERS, BAILEY, JONES & GAY

1300 Florida Title Building

Jacksonville, Florida 32202

JOHN S. COX

COX & WEBB

630 American Heritage Life Building

Jacksonville, Florida 32202

ELLIOTT ADAMS

ADAMS & ADAMS

1116 Barnett Bank Building

Jacksonville, Florida 32202

Attorneys for Appellant

[Certificate of Service omitted in printing.]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. _____

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Appellant,

versus

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS; J. E. EASON, individually and as an official of
said Brotherhood; J. D. SIMS, individually and as an
official of said Brotherhood; H. M. SAWYER, individually
and as a member of said Brotherhood; W. K. MORRIS,
individually and as a member of said Brotherhood; and
G. Q. RUTLAND, individually and as a member of said
Brotherhood,

Appellees.

Order Denying Application

(Filed June 26, 1969)

Presented to the undersigned as a single judge is ap-
pellant's "Application for Stay of Injunction Pending Ap-
peal", seeking a stay of the effectiveness of the District
Court's Order dated June 19, 1969 (filed June 20, 1969)
pending disposition of this appeal. I have concluded that
the application may be made to me under the Federal Rules
of Appellate Procedure, Rule 8(a), because of the imprac-

ticability due to requirements of time of making an application to a panel of this Court. Any stay entered by me would necessarily be effective only until a panel of this Court could act.

After full argument, I conclude that the appeal, although raising serious questions, does not present sufficient probability of success to warrant the entry of a stay pending appeal. It follows that I should not stay the effectiveness of the District Court's Order of June 19, 1969, pending application to a panel of the Court.

The Application for Stay of Injunction Pending Appeal is accordingly ordered DENIED. See *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, — U.S. —, 89 S.Ct. —, 22 L.Ed.2d 344, decided March 25, 1969; *United Industrial Workers of S.I.U., etc. v. Board of Trustees of Galveston Wharves, et al.*, 5 Cir. 1968, 400 F.2d 320, at 330-334; *AVCO Corp. v. Int. Asso., etc.* (1968) 390 U.S. 557, 88 S.Ct. 1235, 20 L.Ed.2d 126.

/s/ BRYAN SIMPSON

United States Circuit Judge

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 28064

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Appellant,

versus

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE
DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

**Order Denying Stay Pending Appeal and Granting
Temporary Stay of Enforcement**

(Filed July 7, 1969.)

Before BELL, AINSWORTH and GODBOLT, *Circuit Judges.*

By the Court:

IT IS ORDERED that the appellant's application for stay of injunction pending appeal, filed in the above styled and numbered cause, is hereby DENIED. Brotherhood of Railroad Trainmen, et al., Petitioners, v. Jacksonville Terminal Co., 89 S. Ct. 1109 (1969).

In view of the importance of the case it is provided, however, that a temporary stay of enforcement of the District Court's injunction be hereby granted for a period of 10 days only from the date of issuance of this order, to enable the parties to seek such further relief as they may desire.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 28064

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Appellant,

v.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,

Appellees.

**Motion for Entry of a Decision Upon the Merits
and for Expediting This Appeal**

(Filed July 8, 1969).

1. Pursuant to Rule 2, Federal Rules of Appellate Procedure, and Rule 11(b) of the United States Court of Appeals for the Fifth Circuit, the appellant respectfully moves the Court to expedite disposition of this appeal upon the merits and to suspend the requirements of the Federal Rules of Appellate Procedure and the rules of the United States Court of Appeals for the Fifth Circuit, to the extent necessary to cause this appeal to be disposed of upon the merits, prior to the expiration of the ten-day period specified in this Court's order dated July 7, 1969.

2. In the event this Court determines that the temporary injunction entered by the District Court should be affirmed, appellant hereby requests that this Court enter, within said ten day period, a final decision on the merits. If such decision be entered, appellant hereby represents unto this Court that appellant shall thereupon promptly petition the United States Supreme Court for a writ of certiorari to review the

final decision of this Court and shall make application to the United States Supreme Court for a stay pending disposition of that petition for writ of certiorari.

3. In order for appellant to be able to obtain review of the final decision of this Court by the United States Supreme Court, this Court must first have disposed of this appeal upon the merits.

4. Unless this Court enters a final adjudication of this appeal and thereby enables the appellant to apply for review of this Court's final decision in this appeal upon the merits, the act of this Court, in its order dated July 7, 1969, granting a stay of enforcement of the District Court's injunction for a period of ten days, shall become a nullity.

5. In the alternative to the foregoing motions, the appellant moves the Court to set this appeal down for hearing and to prescribe an abbreviated briefing schedule so that the appeal may be disposed of upon the merits within the ten-day period specified in this Court's order dated July 7, 1969, or within such extension of that ten-day period as this Court may direct.

DAVID M. FOSTER

FRANK X. FRIEDMANN, JR.

JOHN B. CHANDLER, JR.

By DAVID M. FOSTER

ROGERS, TOWERS, BAILEY, JONES & GAY

1300 Florida Title Building

Jacksonville, Florida 32202

JOHN S. COX

COX & WEBB

630 American Heritage Life Building

Jacksonville, Florida 32202

Attorneys for Appellant

[Certificate of Service omitted in printing.]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 28,004

ATLANTIC COAST LINE RAILROAD COMPANY,

Appellant,

versus

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,

Appellees.

**Application for Stay Pending Petition to the United
States Supreme Court for a Writ of Certiorari**

(Filed July 8, 1969)

Appellant has this date petitioned this Court for an expedited disposition of this action upon the merits. In the event this Court enters its decision affirming the temporary injunction entered by the District Court below, appellant makes the following application:

1. Appellant hereby applies to this Court for a stay of enforcement of the temporary injunction entered below, for a period not exceeding thirty (30) days, pending petition by the appellant to the United States Supreme Court for a writ of certiorari.

2. Appellant hereby represents unto this Honorable Court that within thirty (30) days from the date of the entry of a final decision in this action upon the merits by

the United States Court of Appeals for the Fifth Circuit, the appellant shall petition the United States Supreme Court for a writ of certiorari.

3. A denial of this application for stay shall result in immediate, irreparable harm to the appellant and to numerous industries and private citizens throughout the State of Florida and the Southeastern United States. The status quo can only be maintained by the granting of such a stay. The substantial questions presented in this action merit a reasonable opportunity for the appellant to seek review by the United States Supreme Court by petition for a writ of certiorari.

DAVID M. FOSTER

FRANK X. FRIEDMANN, JR.

JOHN B. CHANDLER, JR.

By DAVID M. FOSTER

ROGERS, TOWERS, BAILEY, JONES & GAY

1300 Florida Title Building

Jacksonville, Florida 32202

JOHN S. COX

COX AND WEBB

630 American Heritage Life Building

Jacksonville, Florida 32202

Attorneys for Appellant

[Certificate of Service omitted in printing.]

IN THE
UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 28064

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Appellant,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

**Order Denying Motion for Entry of Decision on Merits
and for Expediting the Appeal, and Denying
Application for Stay Pending Certiorari**

(Filed July 11, 1969)

IT IS ORDERED, that Appellant's Motion for Entry of a Decision Upon the Merits and for Expediting this Appeal, filed in the above-styled and numbered case, is hereby denied. It is further

ORDERED, that Appellant's Application for Stay Pending Petition to the United States Supreme Court for a Writ of Certiorari is hereby denied.

Before Bell, Ainsworth and Godbold, Circuit Judges.

IN THE
UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 28064

[SAME TITLE]

Petition for Rehearing

(Filed July 14, 1969)

Appellant petitions the Court to reconsider that part of its order entered July 11, 1969, denying Appellant's Motion for Entry of a Decision upon the Merits and for Expediting this Appeal, and states as grounds for its Petition:

1. In this Court's order dated July 7, 1969, it stayed enforcement of the District Court's injunction for a period of ten days, and that action was taken in view of the importance of the case.

This Court must have intended, by that order, for Appellant to have an opportunity to seek review by the United States Supreme Court. A final decision in this appeal is necessary in order for Appellant to avail itself of normal review by certiorari from the Supreme Court of the United States, and to obtain normal consideration of an application for stay directed to the United States Supreme Court. Ordinarily, the United States Supreme Court prefers to act upon a petition for writ of certiorari and a related application for stay after the action has been finally disposed of in the Court of Appeals. In the present instance,

the United States Supreme Court may deem any action that it might take in the present procedural posture of this appeal as an intrusion into the internal workings of this Court. No useful purpose will be served by forcing Appellant to seek relief from the United States Supreme Court by a process other than that normally employed.

2. Under similar procedural circumstances, this Court has expedited its procedures without the agreement of the parties. In the appeal taken in 1966, arising out of the picketing of Jacksonville Terminal Company and decided by this Court's decision in *Brotherhood of Railroad Trainmen v. Atlantic Coast Line Railroad Company*, 362 F.2d 649 (5th Cir. 1966), the following procedure was followed:

(A) The District Court entered an order for preliminary injunction on May 10, 1966.

(B) The Brotherhood filed its notice of appeal and other appellate papers that same day, including an application for stay pending appeal.

(C) On or about May 17, 1966, this Court heard oral argument upon the Brotherhood's motion for stay; that argument was heard in Houston, Texas.

(D) On May 18, 1966, this Court granted the Brotherhood's motion for stay, effective May 24, 1966. In the same order, this Court set oral argument on the merits, to be heard in Atlanta, Georgia, on May 23, 1966.

(E) At the conclusion of the oral argument on May 23, 1966, this Court forthwith denied Atlantic Coast Line's motion to stay pending review by writ of certiorari from the United States Supreme Court.

(F) The final judgment of this Court was entered from the bench on May 24, 1966, after a brief recess following the close of oral argument.

3. The normal appellate processes specified by this Court are designed to: (A) protect the parties by allowing each to fully present its position to the Court, and (B) advise the Court of the relevant facts and applicable law. This appeal involves clear-cut legal issues arising out of facts which are not contested by the parties. It appears that the Court, by denying the Appellant's application for stay, has reached a final determination upon the substantive issue in this case, after full briefing which extensively discussed the merits. It is respectfully submitted that this Court indicated, by its order of July 7, 1969, denying the Appellant's application for stay, that *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Company*, 394 U.S. 369 (1969), controls and mandates an affirmance of the District Court's June 19, 1969, injunctive order.

In the event this Court has not reached a final decision on the merits, it is respectfully submitted that it is appropriate for the Court either to convene for hearing oral argument prior to July 17, 1969, or to extend the period of the stay granted by the Court's order of July 7, 1969, until the Court can hear oral argument and be presented with such further papers as the Appellees care to submit.

Appellant hereby affirmatively states that it has already submitted, by brief, all relevant factual and legal arguments on its behalf in this appeal. Appellant hereby agrees, without prejudice to its right to further appellate review, to have this Court enter a final decision on the merits adverse to the Appellant. In the alternative, Appellant hereby agrees to make itself available at any time or place between the date of this Petition and 12:00 midnight, Thurs-

day, July 17, 1969, for oral argument before the panel in this cause.

4. The only party who may suffer harm by expediting the entry of a final decision in this case is Appellant. It is significant to recognize that, while the Appellees have not agreed that this matter may be disposed of upon the merits on an expedited basis, the Appellees have made no showing of any prejudice which they would sustain by reason of such expedited disposition.

5. Appellant respectfully submits that requirements of fairness, as well as the substantial and irreparable harm which will result from renewed picketing, dictate that this Court should expedite its ordinary procedures to take into account the extraordinary nature of this case. The present procedural posture of this case may cloud the clear and substantial legal question posed by the District Court's injunctive order so that review of that question by the United States Supreme Court may be denied because of circumstances that do not go to the substantive issue in this appeal.

Respectfully submitted,

[Signatures of Attorneys for Appellants omitted]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 28064

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Appellant,
— versus

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVI-
SION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
et al.,
Appellees.

Stipulation to the Court to Enter Judgment

Counsel for the parties in this matter hereby stipulate that the Court may enter a judgment on the merits of the appeal from the District Court's Order dated June 19, 1963, without further briefing or oral argument, affirming such Order of the District Court, such stipulation by appellant to be without prejudice to appellant's rights to further judicial review.

DAVID FOSTER
Attorney for Appellant

ALLAN MILLEDGE
Attorney for Appellees

Dated: July 16, 1969

UNITED STATES COURT OF APPEALS**FOR THE FIFTH CIRCUIT****No. 28064****D. C. Docket No. Civ 67-335-J.**

ATLANTIC COAST LINE RAILROAD COMPANY,***Appellant,*****versus****BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVI-
SION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS;
*et al.,******Appellees.***

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

Before BELL, AINSWORTH and GODBOLD, Circuit Judges.**Judgment****(Filed July 17, 1969)**

The parties in the captioned cause have filed a stipulation for entry of judgment as follows:

"The Court may enter a judgment on the merits of the appeal from the District Court's order dated June 19, 1969, without further briefing or oral argument affirming such order of the District Court, such stipulation

by appellant to be without prejudice to appellant's rights to further judicial review. David Foster attorney for appellant Allan Milledge attorney for appellees"

Pursuant to the foregoing stipulation it is accordingly hereby ordered and adjudged, by this Court, without further briefing or argument that the judgment of the District Court be hereby affirmed, without prejudice to appellant's rights to further judicial review. Brotherhood of Railroad Trainmen, et al., Petitioners v. Jacksonville Terminal Co., 89 S. Ct. 1109 (1969).

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Norris LaGuardia Act (29 U.S.C. §§ 101 *et seq.*)

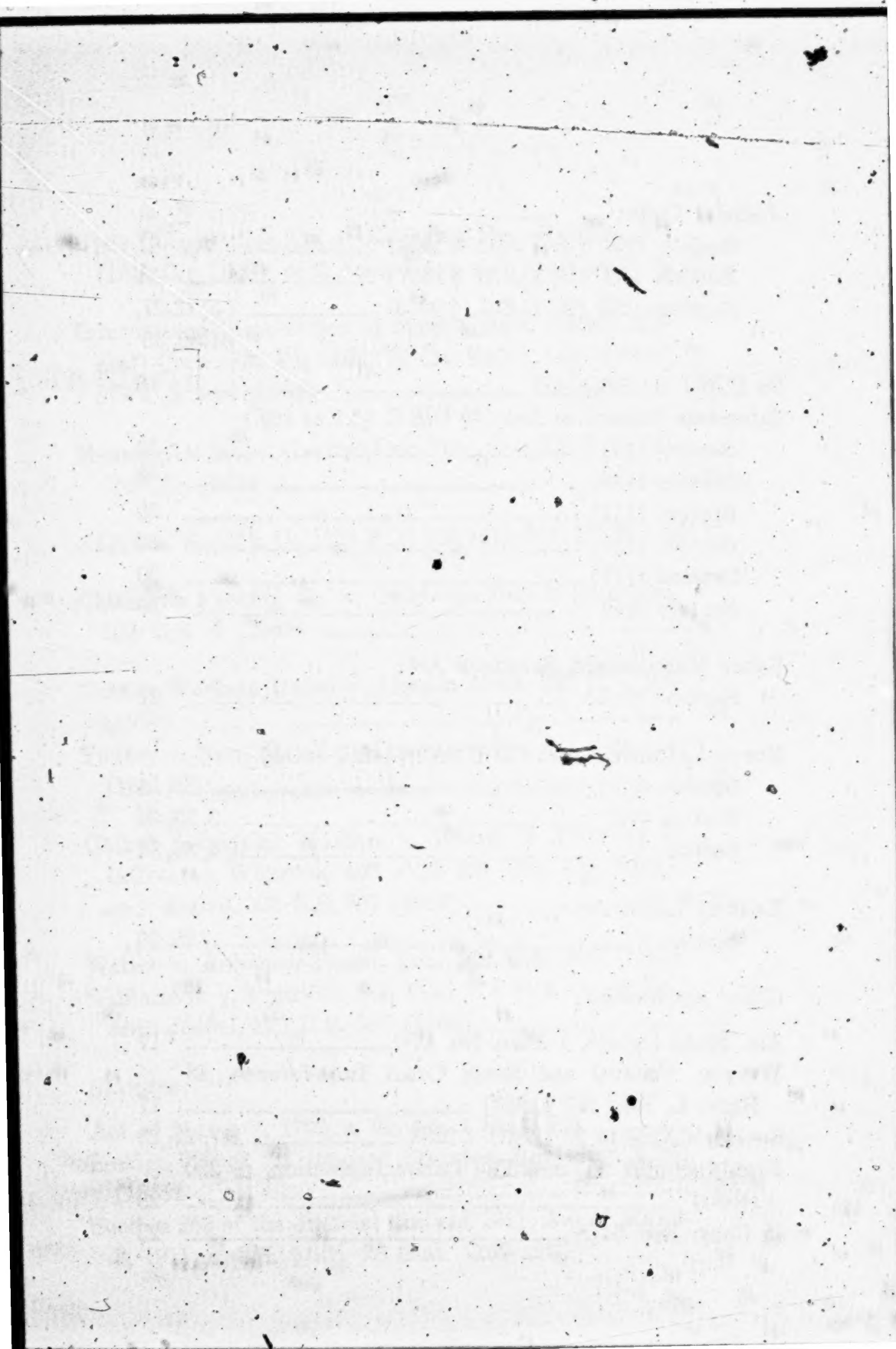
Section 4	33, 34
Section 4(d)	3, 33, 34
Section 7	3, 4, 33, 34

Railway Labor Act:

Section 6	25, 26
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Other Authorities:

Am. State Papers, 1 Misc. No. 17	17
Warren, Federal and State Court Interference, 43 Harv. L. Rev. 347 (1930)	17
Reviser's Note to 28 U.S.C. § 2283	17, 21, 25
Frankfurter & Greene, The Labor Injunction, p. 220 (1930)	23
75 Cong. Rec. 5478	23



IN THE
Supreme Court of the United States

OCTOBER TERM, 1969

No.

ATLANTIC COAST LINE RAILROAD COMPANY,

Petitioner,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood; and G. W. RUTLAND, individually and as a member of said Brotherhood,

Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Petitioner, Atlantic Coast Line Railroad Company¹ ("ACL"), prays that a writ of certiorari be granted to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above cause on July 17, 1969.

¹ This suit was instituted prior to the merger of Atlantic Coast Line Railroad Company and Seaboard Air Line Railroad Company, and has continued to be prosecuted and defended in the name of Atlantic Coast Line Railroad Company, to which we will

OPINIONS BELOW

The order of the Court of Appeals dated July 17, 1969 (Appendix H, pp. 25a-26a, *infra*)² is unreported. The District Court's order dated June 19, 1969, (Appendix D, pp. 16a-18a, *infra*) embodies a discussion of the facts and the court's conclusions of law; it has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on July 17, 1969 (Appendix H, pp. 25a-26a, *infra*). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1):

QUESTIONS PRESENTED

1. Whether it was permissible for the District Court here to enjoin proceedings in a state court, notwithstanding the anti-injunction provisions of Section 2283 of the

continue generally to make reference. Because of this, some references to the premerger situation will be made in the present tense. Seaboard Coast Line Railroad Company, the successor by merger to Atlantic Coast Line Railroad Company and the present sole owner of Moherief Yard, will sometimes be referred to herein as "SCL".

² The record will be referenced as (Record —) except for those portions reproduced in the Appendix to this petition for certiorari, which will be referenced by the letter designation of the document or the page number of the Appendix as (Appendix —). The transcript of the hearing on application for temporary restraining order before the Honorable William A. McRae, Jr., in the District Court for the Middle District of Florida on April 25, 1967, will be referenced as (McRae Tr. —). The transcript of the testimony in the proceedings before the Honorable Charles A. Luckie in the Florida Circuit Court, Duval County, on May 1, 1967, will be referenced as (Luckie Tr. —). Transcripts of other proceedings or hearings will be specifically described.

Judicial Code, either (a) on the theory that by enjoining the pursuit of state court remedies, the District Court was "protecting or effectuating" its earlier judgment denying the state court plaintiff a Federal court injunction by reason of the Norris-LaGuardia Act's ban against Federal court injunctions in cases arising out of labor disputes, or (b) on the theory that Section 2283 is subject to implicit exception in cases where state law is allegedly preempted?

2. In the event that the lower courts here, despite the provisions of Section 2283, had the power to enjoin proceedings in a state court looking toward an injunction against picketing if that picketing could be said to be protected under the rationale of this Court's decision in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969), was the picketing presented here in fact so protected under that decision's rationale? And if so, should not that decision be reconsidered?

3. Whether the injunction granted by the District Court here against the state court proceedings was precluded by Section 4(d) of the Norris-LaGuardia Act, which prohibits the grant of injunctions against the support of litigation by "any person participating or interested in any labor dispute . . . in any court . . . of any State," or by Section 7 of that Act, which prohibits the grant of injunctions without the making of certain findings, not made here, in "any case involving or growing out of a labor dispute"?

STATUTES INVOLVED

This case primarily involves the application of the anti-injunction statute, 28 U.S.C. § 2283, which provides:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The case also involves the Norris-LaGuardia Act, 29 U.S.C. §§ 101 *et seq.*, which is set forth as Appendix I, pp. 27a *et seq.*

STATEMENT

This case is another in the series of cases before this Court related to the dispute between the Florida East Coast Railroad ("FEC") and the railway labor unions which have been on strike against it for as much as six years. Like two of the previous cases, it concerns the attempt of those unions to involve third parties in the dispute between the FEC and the unions. However, the legal and factual issues involved in this case are very different from those in the two cases which have previously come before this Court concerning the attempt of those unions to involve third parties in their dispute with the FEC.*

* Those cases are *Atlantic Coast Line R. Co. v. Brotherhood of Railroad Trainmen*, 385 U.S. 20 (1966), in which the Court affirmed by a four-to-four vote a judgment of the Court of Appeals for the Fifth Circuit, *Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co.*, 362 F.2d 649 (1966), which by a two-to-one vote had held the Jacksonville Terminal Company, and two

In the first place, unlike those two previous cases, this case does not involve picketing of the Jacksonville Terminal Company facilities—facilities which are jointly owned by the FEC and the nonstruck carriers. This case involves picketing solely of the Moncrief Yard, wholly-owned by the Seaboard Coast Line Railroad Company, a nonstruck carrier. Despite the fact that in the two cases which have come before the Court, injunctive relief against the unions' picketing the jointly-owned Jacksonville Terminal facilities has been held unavailable, the unions have not sought to reinstitute picketing at that terminal. Instead, by this suit they are now attempting to establish their right to picket a major classification yard wholly-owned by one of the nonstruck carriers.

In the second place, this case does not involve the question of the propriety of an injunction restraining secondary picketing, but involves the extraordinary action of a Federal District Court in enjoining proceedings in a state court in the face of the anti-injunction statute, Section 2283 of the Judicial Code, and of the Norris-LaGuardia Act.

Background.—In May, 1966, certain rail unions which had a dispute with the FEC threw a picket line around the premises of the Jacksonville Terminal Company in an effort to make the Terminal Company and the other rail-

of the carriers using it, to be barred from obtaining an injunction against the picketing of the Terminal Company by reason of the Norris-LaGuardia Act; and *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969), in which a state court injunction against picketing the Terminal properties, obtained by the Terminal Company, was reversed by this Court by a four-to-three vote.

Other cases involving the FEC dispute are cited in the *Jacksonville Terminal* opinion, 394 U.S., at 371.

roads using its facilities stop doing business with the FEC. Suits for an injunction were filed successively in the Federal courts and the state courts; by two carriers and the Terminal Company in the Federal court and by the Terminal Company in the state court. While the Federal court injunction terminated in November, 1966, after this Court's four-to-four affirmance of the Fifth Circuit's judgment in *Atlantic Coast Line R. Co. v. Brotherhood of Railroad Trainmen*, 385 U.S. 20 (1966), the state court injunction remained in effect until this Court's decision in the spring of 1969 in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, which reversed it.

In 1967, while the state court injunction against picketing at the Jacksonville Terminal premises was in effect, the Brotherhood of Locomotive Engineers ("BLE") commenced picketing the Moncrief Yard, the major railroad yard of the ACL in Florida and a point through which virtually all the freight carried by ACL on its own lines to and from the Florida peninsula must pass. The ACL and the Seaboard maintain extensive service to the central and western portions of peninsular Florida on their own lines (now merged) and serve Miami via Jacksonville (the principal Jacksonville line passing through the Moncrief Yard) and Tampa on the west coast. The FEC serves only the east coast of Florida, its line running solely between Jacksonville and Miami.

The Moncrief Yard.—Moncrief Yard is a major classification yard wholly owned by SCL (McRae Tr. 21, 83, 84, 86-88). Virtually all freight carried by ACL to and from peninsular Florida moves through the Yard. (McRae Tr. 88) ACL does not provide FEC with switching or signal services at Moncrief (McRae Tr. 77, 78); ACL does not

repair or maintain FEC cars or locomotives or provide any other miscellaneous services to FEC (McRae Tr. 77, 79); and no FEC employees report to or depart from work at Moncrief Yard (McRae Tr. 78). There is no interlocking stock ownership between FEC and ACL. The tracks and real property of FEC and the ACL's Moncrief Yard do not adjoin. (McRae Tr. 43-45, 76)

The primary function of Moncrief Yard is classification, that is, breaking down incoming trains and transferring the cars to appropriate outgoing trains. The tracks which make up Moncrief Yard form one integrated operation. (McRae Tr. 56) All ACL main line tracks into and out of Florida pass through Moncrief Yard. (McRae Tr. 88) Each day, nine road freight trains moving to and from the North and four or five road freight trains moving to and from the South are classified in Moncrief Yard. (McRae Tr. 87). The vast majority of car movements within Moncrief Yard are from one ACL road train to another.⁴ Because of the Yard's strategic function, the ACL cannot function without Moncrief Yard. (McRae Tr. 86)

Besides being a major classification yard of the ACL, and an essential point in its own services to peninsular Florida, the Moncrief Yard is also a place in which interchange is effected between the FEC and the ACL. A track into Moncrief Yard is designated for the movement into the Yard by FEC of northbound traffic destined for ACL and of southbound traffic delivered by ACL to FEC. Specified tracks within the Yard are designated for ACL-FEC interchange. (McRae Tr. 65) FEC employees place north-

⁴ As an example, in December, 1966, 46,000 cars were handled through Moncrief Yard. Of these cars, 36,000 came into and went out of Moncrief Yard on ACL road trains. (McRae Tr. 94-95)

bound cars on specified tracks in the Yard and then deliver the car documents to ACL. (McRae Tr. 67, 80, 81) Thereafter, the car is "owned" by ACL, the movement is for the account of ACL, and ACL has the risk of loss or damage.⁵ Likewise, southbound cars which are destined for the FEC are placed on certain designated tracks in the Yard by ACL employees, to be picked up by FEC employees. Until the car documents are transferred by ACL to FEC, these cars are the "property" and under the control of ACL. Thus, the only work done by the ACL employees at Moncrief Yard on the cars which have originated on the FEC and been left in the Yard or which will be picked up by the FEC from the Yard is the ACL's own work.

The Picketing.—The BLE commenced picketing Moncrief Yard on Sunday, April 23, 1967. (McRae Tr. 7, 8, 48) The picket signs were displayed most prominently at roadway entrances to employee parking areas. (McRae Tr.

⁵ Rule 7, Car Service Rules of the Association of American Railroads, Circular No. OT-10-B (revised 4/1/68), promulgated under § 1(10) of the Interstate Commerce Act, 49 U.S.C. § 1(10), provides in pertinent part:

(A) Cars shall be considered as having been delivered to a connecting railroad when placed upon the track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by necessary data for forwarding and to insure delivery, and accepted by the car inspector of the receiving road.

Notwithstanding the foregoing paragraph, the receiving road shall be responsible for the cars, contents and per diem after receipt of the proper data for forwarding and to insure delivery. . . .

• • • • • INTERPRETATIONS

Question: After a car has been accepted by the inspector of the receiving road, is the delivering road relieved from responsibility for damage to car and contents?

Answer: Yes.

7-11, 51-53) The message of the signs, of the handbills then distributed, and apparently of phone calls made during the night to some of the employees, was that ACL employees should report for work but should refuse to perform any service related to ACL cars which were eventually destined to or had originated on the FEC. (Evidentiary Exs. 1-3; McRae Tr. 14, 15, 52, 53) The ACL employees followed the request.⁶ The result was an almost immediate and total breakdown in and blockage of operations in Moncrief Yard due to the failure of ACL employees to classify cars arriving on incoming road trains and to build up road trains outbound. (McRae Tr. 71, 72, 83, 84, 85) The rail operations disrupted in this fashion included the movement of thousands of rail cars destined to other points inside and outside Florida on the ACL, interchange between ACL and the Seaboard Air Line Railroad Company (despite the subsequent merger of these two lines, a similar disruption would occur today with respect to the physical interchange of cars which had been routed on the lines involved), interchange between ACL and the Southern Railway System, and switching and delivery of

⁶ The reaction of the employees is significant. After the picketing began, the switch crews assigned to move cars to and from tracks designated for placement of cars for interchange with FEC moved their switch engines into position but then refused to perform their work in the normal course and stepped down from their engines. (McRae Tr. 5, 6, 12-15, 57, 69, 70) Subsequently, as the ACL called other crew members to work, according to the procedures mandated by its binding and existing labor contracts, the crew members would report directly to the offices of the supervisory personnel and state that they would not perform their ordinary services. (McRae Tr. 20)

One road crew refused to take a train out of Moncrief Yard north to Waycross, Georgia, even though at the time of refusal the train had already been made up and all of the component cars were under the total and legal control of ACL. (Luckie Tr. 11, 22, 72, 79)

cars by ACL to industrial sites in metropolitan Jacksonville.

The picketing was directed solely at ACL employees who were performing duties for their own employer in relationship to rail cars "owned" by their employer. (McRae Tr. 96) The avowed purpose (which was accomplished) was to close down Moncrief Yard. (McRae Tr. 23) And, due not only to numerous practical problems but also to serious safety hazards, this result could not be avoided by the railroad's use of supervisory personnel. (McRae Tr. 84, 87-90)

The Federal Court Action.—The complaint in the present action was filed in the United States District Court for the Middle District of Florida by ACL against BLE on April 25, 1967. (Record 1-16) The only relief prayed for was an injunction against the picketing; damages were not sought. The ACL brought on a prayer for a temporary injunction that day, which the District Court the next day, April 26, 1967, denied on the basis of the 1966 ruling of the Fifth Circuit—affirmed by an equally-divided Court in this Court—in the case involving the Jacksonville Terminal, to the effect that the Norris-LaGuardia Act prevented the issuance of an injunction by a Federal court. (Appendix A, pp. 4a-5a, *infra*) At the request of the attorneys for the ACL, the summonses with complaint attached which had been issued for service upon the defendants were then not served, and the Federal court case lay completely dormant for over two years. No answer or counterclaim was filed by the BLE during that period.

The State Court Action.—The next day after the denial of the Federal court injunction, April 27, 1967, ACL filed

an action in a state court, the Circuit Court for Duval County, Florida, against the picketing of Moncrief Yard based solely upon state law, namely, the Florida Transportation Act, the Florida Restraint of Trade Law, and the Florida Labor Relations Law. An extensive hearing ensued at which considerable evidence and testimony was received, and the state court entered a temporary injunction on May 3, 1967. (Appendix B, pp. 6a-13a, *infra*) The BLE made no efforts to have this order reviewed or attacked for two years. However, on three occasions—one immediately after the filing of the complaint, one after the entry of the temporary injunction, and one in May, 1969—the BLE removed the suit to Federal court; but on each occasion, ACL's motion to remand was granted on the grounds that the District Court did not have original jurisdiction of the action under Sections 1331 and 1337 of the Judicial Code, since the action was brought solely under Florida law.⁷

In May, 1969, the BLE made application to the Circuit Court for Duval County to dissolve the injunction granted on May 3, 1967, on the grounds that this Court's decision of March 25, 1969, in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, precluded the application of state law and the grant of a state court injunction against the picketing presented by the case. ACL opposed the application, urging before the Florida

⁷ The three removal cases, in each of which a motion to remand was granted, are all in the United States District Court for the Middle District of Florida, and are Case No. 67-338-Civ.-J, filed April 27, 1967, and remanded the same day; Case No. 67-418-Civ.-J, filed May 23, 1967, and remanded July 6, 1967; and Case No. 69-351-Civ.-J, filed May 23, 1969, and remanded May 28, 1969. See Affidavit of F. X. Friedmann filed June 24, 1969, in the District Court.

Circuit Court that this Court's decision was clearly distinguishable and inapplicable to this case of picketing of a facility solely owned by a carrier not a party to the primary FEC labor dispute, a facility where none of the extensive services recited in this Court's opinion in the *Jacksonville Terminal* case (394 U.S., at 372-75, 389-90) were furnished to the FEC.*

Immediately after oral argument before the Florida Circuit Court on May 23, 1969, the BLE (a) made the third of its three unsuccessful attempts to remove the suit pending before the Florida Circuit Court to the Federal District Court, and (b) filed a handwritten answer in the Federal court proceeding which had been dormant for the two years after the ACL's application for a temporary injunction had been denied. (Record 22-26)

The Florida Circuit Court in a letter opinion rendered on June 3, 1969, viewed the picketing at Moncrief Yard as factually and legally distinguishable from that at the Jacksonville Terminal and declined to dissolve the injunction it had issued on May 3, 1967. (Appendix C, pp. 14a-15a, *infra*) At the hearing in the Florida Circuit Court, the BLE had requested that the injunction be made permanent; ACL did not object (Luckie 1969 Tr. 55), and the Florida Circuit Court's letter opinion indicated that the request of counsel for the BLE was granted and that counsel for the BLE could proceed to have a final judgment entered.*

* See Transcript of Proceedings before Honorable Charles A. Luckie, May 29, 1969, pp. 34-46 (hereinafter "Luckie 1969 Tr.").

* Through August 14, 1969, counsel for BLE had not yet caused final judgment to be entered.

The Federal Court Injunction Against the State Court Proceeding.—The BLE did not pursue any steps in the Florida courts to obtain a review of the injunction or of the Circuit Court's action in refusing to dissolve it, notwithstanding the full availability of appellate remedies in the Florida state courts. Instead, the BLE the same day filed in the dormant Federal court proceeding in which it was the defendant a motion for preliminary injunction against the ACL's availing itself of the state court injunction.¹⁰ (Record 29-32)

On June 19, 1969, the District Court denied a motion by the ACL to dismiss its complaint.¹¹ Over the objections of ACL, based on the anti-injunction statute (Section 2283 of the Judicial Code) and the Norris-LaGuardia Act, the District Court granted the BLE's motion for an injunction against the state court proceedings. (Appendix D, pp. 16a-18a, *infra*)

On June 26, 1969, ACL took an appeal to the Court of Appeals for the Fifth Circuit under 28 U.S.C. § 1292(a)(1), and sought a stay of the District Court's order pending consideration by the Court of Appeals of the appeal from the order granting the preliminary injunction against the state court proceedings. After denial by a single judge,

¹⁰ The injunction requested and granted was one "pending final hearing and determination of this action." The content of this term is hard to make out, since the BLE as defendant was not praying for any permanent relief in the matter and ACL at this point was seeking to effect a voluntary dismissal of its complaint, which voluntary dismissal it stated on the record before the District Court might be with prejudice. The BLE resisted the voluntary dismissal, with or without prejudice, of ACL's complaint.

¹¹ It was held that the filing of the handwritten answer by BLE took away ACL's right to a voluntary dismissal. See Appendix D, pp. 16a-17a, *infra*.

the application for a stay pending appeal was renewed and submitted to a three-judge panel of the Court of Appeals, consisting of Circuit Judges Bell, Ainsworth and Godbold. On July 7, 1969, the panel denied the stay application, citing as authority this Court's decision in the *Jacksonville Terminal* case, which did not, of course, involve Section 2282 of the Judicial Code (having arisen on certiorari to the state courts) but simply involved the question whether the state courts could enjoin picketing by the railroad brotherhoods at the Jacksonville Terminal/properties. However, the panel "in view of the importance of the case" granted a ten-day temporary stay through July 17, 1969, to permit ACL to pursue other remedies. (Appendix E, pp. 19a-20a, *infra*)

In response to this suggestion by the Court of Appeals, ACL then filed a motion in which it waived its rights to further briefing and oral argument and consented to and requested the final disposition of the case on the merits on the basis of the record filed and the briefs already submitted, within the ten-day period provided for by the Court's order. (Record 533)¹² The purpose of ACL's motion was to consent, procedurally, to the entry of a judgment without further briefing in the Court of Appeals affirming the District Court so that ACL might petition for certiorari and apply for a stay pending certiorari.

The Court of Appeals on July 11, 1969, at first refused without explanation to enter a judgment on the merits. (Record 535)¹³ ACL proceeded to make application to

¹² In connection with the stay application to the Court of Appeals, the parties had already filed briefs aggregating 45 pages which had extensively discussed the merits of the appeal.

¹³ The court also then denied a requested stay pending certiorari. Record 534, 535.

Mr. Justice Black on July 15, 1969, for a stay of the District Court's injunction pending review by this Court of the judgment finally to be entered by the Court of Appeals upon the appeal to it. After receiving an opposing memorandum of the BLE, Mr. Justice Black granted the stay application on July 16, 1969 (Appendices F and G, pp. 21a-24a, *infra*), observing that the questions presented under Section 2283 appeared "close, highly complex and difficult." (Appendix F, p. 22a, *infra*) Mr. Justice Black also cited the "widespread importance" of the questions and observed that their solution "might broadly affect the economy of the State of Florida, the United States, and interstate commerce." (P. 23a, *infra*) The order imposed a duty on ACL "to expedite all actions necessary to present its petition for certiorari here." (P. 23a, *infra*)¹⁴

Meanwhile, ACL had filed a petition for rehearing with the Court of Appeals with respect to the order of the Court of Appeals denying an expedited hearing and expedited determination of the appeal on its merits. (Record 536) On July 16, 1969, the Court of Appeals requested BLE to respond to this petition, and shortly thereafter the parties filed a stipulation with the Court of Appeals that that court might enter a judgment affirming the District Court's order, in the light of its indications as to its views of the substantive law expressed in its order denying the stay application. This stipulation was without prejudice to ACL's rights to judicial review. On July 17, 1969, the Court of Appeals affirmed the judgment of the District Court, again citing only this Court's decision in the *Jacksonville Terminal* case. (Appendix H, pp. 25a-26a, *infra*)

¹⁴ Mr. Justice Black on July 21, 1969, denied a petition for reconsideration filed by the BLE.

REASONS FOR GRANTING THE WRIT

A. *The District Court's Injunction Here Violated Section 2283 of the Judicial Code*

1. In this case, the action of the District Court in enjoining proceedings in the Florida state courts,¹ countenanced by the Court of Appeals, amounts to a flat violation of the anti-injunction statute, Section 2283 of the Judicial Code, and the established law as developed under it by this Court and by other courts of appeals.

Section 2283 provides that: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The leading case decided by this Court construing this provision is *Amalgamated Clothing Workers of America v. Richman Brothers Co.*, 348 U.S. 511 (1955). There, it was held that a Federal district court was without power to enjoin a state court injunction against certain labor union practices, despite the fact that under the substantive law as established by decisions of this Court,² the jurisdiction

¹ While the injunction in form is simply one against ACL availing itself of the benefit of the proceedings before the state court, such an injunction has uniformly been treated as tantamount to an injunction against proceedings in a state court, for purposes of the Federal anti-injunction statute. See, e.g., *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.*, 309 U.S. 4, 9 (1940); *Amalgamated Clothing Workers of America v. Richman Brothers Co.*, 348 U.S. 511 (1955); *United Industrial Workers v. Board of Trustees of Galveston Wharves*, 400 F.2d 320, 330-31 (5th Cir. 1968).

² The principal such case being *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468 (1955), a case decided only one week before the de-

of the state court was preempted by that of the National Labor Relations Board under the Labor Management Relations Act. The Court in *Richman Brothers* held that in Section 2283 Congress had made it clear that injunctive remedies in the lower Federal courts against state court proceedings were not to be substituted for the normal, orderly processes of state court appellate review and this Court's reviewing jurisdiction over the state courts by certiorari and appeal.³ This accords with the fundamental

cision in *Richman Brothers*, and acknowledged by the Court in *Richman Brothers* to be controlling on the merits. 348 U.S., at 512, 514.

³ As early as the Act of March 2, 1793, c. 22, § 5, 1 Stat. 334, Congress sharply limited the power of Federal courts by providing that "no . . . writ of injunction [shall] be granted to stay proceedings in any court of the state" This provision became, without substantial change, § 720 of the Revised Statutes, Rev. Stat. § 720 (1875), and later § 265 of the Judicial Code of 1911, Act of March 3, 1911, c. 231, § 265, 36 Stat. 1162.

Little or no legislative history is available in connection with the 1793 Act. Congressional action in 1793 reputedly resulted from a report by Attorney General Edmund Randolph to the House of Representatives on December 27, 1790, who declared that "[I]t is enough to split the same suit into one at law, and another in equity, without adding a further separation, by throwing the common law side of the question into the State courts, and the equity side into the Federal courts." *Am. State Papers*, 1 Misc. No. 17, at 34, n. 8. Professor Charles Warren indicates that the Act is a significant illustration of the strong apprehension early felt by Congress of an encroachment by Federal courts on state court jurisdiction. See Warren, *Federal and State Court Interference*, 43 Harv. L. Rev. 347-48 (1930).

In the leading case of *Toucey v. New York Life Insurance Co.*, 314 U.S. 118 (1941), § 265, the predecessor of § 2283, of the Judicial Code was strictly interpreted by this Court in an opinion by Justice Frankfurter, as forbidding an injunction even where sought to prevent relitigation of a case fully tried in federal court under the single applicable law. Neither § 2283, passed subsequent to the *Toucey* decision, nor the Reviser's Note to that section, which indicated that the revision reversed *Toucey* on its facts, indicates congressional intent to provide Federal district courts with appel-

theory of the statute which expresses "an important Congressional policy—to prevent needless friction between state and federal courts." *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.*, 309 U.S. 4, 9 (1940).

The Court in *Richman Brothers* also made it plain that an exception was *not* to be engrafted upon Section 2283 "whenever the moving party in the District Court alleges that the state court is 'wholly without jurisdiction over the subject matter, having invaded a field preempted by Congress.'" 348 U.S., at 515. The Court stated:

"[W]e cannot accept the argument of petitioner and the [National Labor Relations] Board, as *amicus curiae*, that § 2283 does not apply whenever the moving party in the District Court alleges that the state court is 'wholly without jurisdiction over the subject matter, having invaded a field preempted by Congress.' No such exception had been established by judicial decision under former § 265 [the predecessor of § 2283, see n. 3, p. 17, *supra*]. In any event, Congress has left no justification for its recognition now." 348 U.S., at 515.

In short, the teaching of *Richman Brothers* is that the Federal district courts do not sit as appellate courts over the state tribunals in cases where preemption of state court remedies in labor and related matters are concerned. As the Fifth Circuit once put it, on an occasion when it was more faithful to Section 2283:

late power over state court systems; and this is, of course, confirmed by this Court's subsequent decision in *Richman Brothers*.

"[A] Federal court [has] neither appellate nor supervisory control over a State . . . judge.

"Plaintiffs filed a suit in the State court of Dallas County, Texas, which came up for hearing. . . . [T]he ruling of the Court was not acceptable to the plaintiffs and they come to the Federal court for a correction of such ruling and for instruction of the Federal judge as to how the case should be tried.

"Nowhere has a Federal trial court been given supervisory or appellate jurisdiction over State judges." *Williamson v. Puertfoy*, 316 F.2d 774, 775 (5th Cir. 1963), cert. denied, 375 U.S. 967 (1964).

This case* is governed in all respects by *Richman Brothers*. Indeed, it can be argued that this case is a stronger one for the application of the anti-injunction statute than *Richman Brothers*. In *Richman Brothers* it had been established that the state courts had no jurisdiction to grant the injunction against the picketing; yet this Court nonetheless held that a Federal court injunction against the state court's assuming jurisdiction was barred by Section 2283. 348 U.S., at 512. Here, the decision of this Court which is relied upon by the BLE in order to assert that the state court injunction against the picketing was erroneous repeatedly held that "the Florida courts are not pre-empted of jurisdiction over this cause." *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 390 (1969); *id.*, at 375-77. In any event, the action of the lower courts in failing to follow *Richman Brothers* here provides a conflict with the

law as established by this Court which we submit this Court ought to resolve upon certiorari.

The decision of the Court of Appeals also creates a conflict between the circuits. The Courts of Appeals for the Second, Fourth and Eighth Circuits have consistently followed the teaching of this Court in *Richman Brothers* that Section 2283 prohibits enforcement of a Federal preemption defense, whether or not meritorious, by injunction against state court proceedings. See *International Association of Machinists v. United Aircraft Corp.*, 333 F.2d 367 (2d Cir. 1964), *cert. denied*, 379 U.S. 946 (1964); *German v. South Carolina State Ports Authority*, 295 F.2d 491 (4th Cir. 1961); *NLRB v. Swift & Co.*, 233 F.2d 226 (8th Cir. 1956). The evident conflict created between the circuits by the decision below presents a further compelling reason for the grant of certiorari in this case.

2. Just as in *Richman Brothers*, none of the statutory exceptions to the prohibition of Section 2283 is present here: (a) The first exception permits an injunction to issue "as expressly authorized by Act of Congress." There is no such Act of Congress here, and, as a matter of fact, the BLE has never rested on this ground of exception. For the reasons discussed in *Richman Brothers*, 348 U.S., at 516-19, the general terms of the Railway Labor Act do not constitute any "express" authorization.

(b) Nor can it be said that the injunction granted here was justified by the exceptions⁴ which permit the injunction

⁴ In *German*, the Court of Appeals underscored the point that the Federal courts should not undertake to look into the legality of the picketing before the state court. 295 F.2d, at 495.

⁵ For reasons similar to those cited in *Richman Brothers*, 348 U.S., at 511, *Capital Service, Inc. v. NLRB*, 347 U.S. 501 (1954),

of state court proceedings "where necessary in aid of its [the District Court's] jurisdiction, or to protect or effectuate its judgments."⁶ The only proceeding pending before the District Court was ACL's own suit for an injunction against the same picketing, in which, the day after the suit was filed and two years before the BLE's motion for an injunction against the state court proceedings the

is clearly distinguishable. That case turns upon the exception for injunctions necessary in aid of the District Court's jurisdiction. Under the facts of that case, the presence of the interim remedies in Federal court against secondary boycotts vested in the National Labor Relations Board under § 10(L) of the Labor Management Relations Act was found to be a sufficient authorization for the Board to obtain an injunction against proceedings in the state court by private parties where the Board had filed a § 10(L) complaint in the district court. Indeed, in *Capital Service* the Board was seeking a limited injunction under § 10(L), but which would permit certain aspects of the picketing. The employer then proceeded in state court to seek and obtain a much broader injunction completely prohibiting the picketing in question. Besides the other obvious bases of distinction of *Capital Service* (including the absence of any administrative regulatory regime here), it is clear, as we develop below, pp. 22-24, that there can be no conflict between the decision of the District Court in denying the 1967 injunction and in any action taken by the state court, since the sole basis for the denial of the injunction in 1967 in the District Court was the Norris-LaGuardia Act.

⁶ The authorities indicate that the purpose of the exception for injunctions "necessary in aid of its jurisdiction" was to "make clear the recognized power of the Federal courts to stay proceedings in state cases removed to the district courts" (see Reviser's Note to § 2283) and to cover the situation of a "res" over which only one court could take jurisdiction. See, e.g., *Hyde Construction Co. v. Koehring Co.*, 388 F.2d 501, 509 (10th Cir. 1968), cert. denied, 391 U.S. 905 (1968). The exception for injunctions necessary to "protect or effectuate" Federal court judgments was inserted to permit the Federal courts to enjoin the relitigation, in state courts, of cases and controversies fully adjudicated by the Federal courts. See Reviser's Note to § 2283, n. 3, p. 17, *supra*; see *Commerce Oil Refining Corp. v. Miner*, 303 F.2d 125, 127 (1st Cir. 1962). This case presents none of these situations.

District Court found that the only relief prayed for by the ACL could not be granted by reason of the Norris-LaGuardia Act's ban on injunctions.⁷ The suit had then lain dormant for two years until it was revived by the defendant BLE as a purported basis for the injunction against state court proceedings now under review. BLE had never sought any affirmative relief in that suit until it filed the motion for an injunction against the state court proceedings.

It could not conceivably be claimed that the proceedings in the District Court could be said to require an injunction against the state court proceedings as necessary to aid them, or as necessary to protect or effectuate any judgment to be entered in the District Court proceedings. The sole relief sought by ACL in the District Court proceeding was an injunction against the picketing. The holding of the District Court was that such an injunction could not be granted, by reason of the Norris-LaGuardia Act.⁸

The fact that the District Court held that it was without power to grant an injunction by reason of the Norris-LaGuardia Act does not mean that it had to enjoin proceedings for a similar injunction sought before the state courts in order to aid its jurisdiction or to protect and

⁷ Our position does not rest on whether the fact that the District Court had no power to grant the only remedy against BLE prayed for by the ACL's complaint means that the District Court had no "jurisdiction" in the sense of § 2283 that an injunction against the state court proceedings was necessary to aid. Cf. *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557 (1968).

⁸ In arguing the case on the temporary injunction application in 1967, respondent's counsel engaged in the following colloquy:

"The Court: You're basing your case solely on the Norris-LaGuardia Act?"

"Mr. Milledge [attorney for BLE]: Right." MacRae Tr. 169.

effectuate its judgments. For the Norris-LaGuardia Act was intended essentially as a limitation on the Federal equity power, the power of the Federal courts to grant injunctions. The Act "explicitly applies only to the authority of United States courts 'to issue any restraining order or injunction.' All other remedies in Federal courts and all remedies in state courts remain available." Frankfurter & Greene, *The Labor Injunction* (1930), p. 220. "The bill does not take one iota of jurisdiction. . . . from the state courts and does not change any state law." Remarks of Representative LaGuardia, 75 Cong. Rec. 5478.

Thus, the holding of the District Court to the effect that ACL could not obtain an injunctive remedy in this matter is complete in and of itself. It does not affront the District Court's jurisdiction for a state court then to exercise its jurisdiction; nor does such a holding by a state court in any way interfere with any judgment by the District Court. "If the enjoined state proceeding could not prejudice any otherwise proper disposition of some claim pending in the federal suit, the injunction cannot be in aid of invoked federal jurisdiction." *Muscarelle, Inc. v. Central Iron Mfg. Co.*, 328 F.2d 791, 794 (3d Cir. 1964).

In opposing the Stay Application in this Court, BLE urged that the April 26, 1967, order of the District Court constituted a full and complete, and presumably exclusive, determination of the legal rights of the parties to the suit, and argued from this premise that an injunction against a subsequent state court injunction would, on this account, be justified by the exceptions in Section 2283. We need not comment on whether this follows, since this contention clearly overstates the effect of the District Court's order of April 26, 1967. BLE's argument simply cites the Dis-

trict Court's conclusions of law (Appendix A, pp. 3a-4a, *infra*) out of context. A full reading of those conclusions of law makes it plain that the court's ultimate holding is that the Norris-LaGuardia Act bars the requested injunction. The subsidiary conclusions as to the right of self-help having matured as between the direct parties to the FEC-BLE dispute simply are articulations of the reasons why the Norris-LaGuardia Act was held applicable to bar the injunction, notwithstanding the "accommodation" cases which indicate that where the Railway Labor Act's processes are still available between the parties—as they were no longer between FEC and BLE—the Norris-LaGuardia Act does not bar an injunction. See, *e.g.*, *Brotherhood of Railroad Trainmen v. Chicago River & I.R. Co.*, 353 U.S. 30, 40 (1957). See *Brotherhood of Locomotive Engineers v. Baltimore & O.R. Co.*, 372 U.S. 284 (1963).

Indeed, the controlling authority cited by the District Court in this connection in its April 26, 1967, order was this Court's four-to-four affirmance, 385 U.S. 20 (1966), of the Fifth Circuit's ruling that the Norris-LaGuardia Act barred a Federal injunction against the picketing at the Jacksonville Terminal. *Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co.*, 362 F.2d 649 (1966). But that decision made it plain, indeed "emphasized," that in a decision turning on the Norris-LaGuardia Act the sole effect of the court's action is to deal with the "enjoinability" of the defendants' activity "and not with its legality for any other purpose." *Id.*, at 653. It is therefore completely without foundation to suggest that the District Court's April 26, 1967, order somehow amounts to a complete and exclusive declaration of the rights of ACL and BLE, furnishing a predicate for an injunction against state court proceedings under the exceptions for injunctions

"necessary in aid of" the District Court's jurisdiction or "necessary . . . to protect or effectuate its judgments." The District Court in 1967, in denying ACL a temporary injunction, could not and did not purport to define the ultimate Federal legal rights of the parties, let alone their rights under state law.⁹

The principal authority relied upon by the District Court¹⁰ for the applicability of this exception to Section 2283 was *United Industrial Workers v. Board of Trustees of Galveston Wharves*, 400 F.2d 320 (5th Cir. 1968), *cert. denied*, 395 U.S. 905 (1969). There, the Court of Appeals held it proper for a district court to enjoin the enforcement of a state court injunction which prohibited picketing by a union subject to the Railway Labor Act where extensive proceedings respecting the dispute had already been had in Federal court and injunctive orders there entered in favor of the party seeking the injunction against the state court proceedings. The court there held (400 F.2d, at 330-34) that such an injunction was appropriate under the exception to Section 2283 which permits injunctions where necessary to protect or effectuate the judgments of a district court. But the specific reason for this holding was that the District Court had previously issued a mandatory injunction, under Section 6 of the Railway Labor Act, re-

⁹ Accordingly, the case cannot even be claimed to fall within the scope of the 1948 revision referred to in the Reviser's Note as overruling the *Toucey* doctrine in situations of relitigation of a case fully tried. See n. 3, p. 17, *supra*.

¹⁰ The Court of Appeals relied solely on the *Jacksonville Terminal* case, 394 U.S. 369, which did not involve an injunction against state court proceedings or any question under § 2283 but only questions of the substantive law to be followed by state courts. It apparently believed that the preemption issue could be litigated through a proceeding in the District Court despite § 2283. We refute this in point 1, above.

quiring management, which had refused to bargain with the union in the manner required by Section 6 of the Act, to proceed so to bargain. Indeed, the case was twice before the District Court for the fashioning of a detailed remedial decree to redress the wrongs committed by management. The Court of Appeals concluded that the District Court's mandatory order requiring the parties to bargain as required by Section 6 could be frustrated by the pendency of a state court injunction which limited the parties' rights of self-help if the bargaining proved inconclusive. See 400 F.2d, at 331.

Here, there is no order of the District Court requiring the parties to this suit to take any action with respect to each other. Indeed, the only affirmative order ever entered by the District Court in this matter was its order enjoining proceedings in the state court. It cannot remotely be said that the injunction against the state court proceedings granted by the District Court is necessary to protect or effectuate any other order or judgment which that court has entered. To say that the injunction was necessary to effectuate any judgment of the District Court is simply to lift oneself by one's bootstraps.¹¹

¹¹ The District Court seemed to have the view (Appendix D, pp. 17a-18a, *infra*), based upon an apparent misreading of the *Richman Brothers* opinion, that the meaning of § 2283 was that wherever the District Court had jurisdiction apart from § 2283, it could proceed to enter an injunction against state court proceedings. If this were what § 2283 meant, it would be essentially meaningless; on its face, § 2283 is a prohibition against the granting of injunctions in cases otherwise within the jurisdiction of the District Court. The exception in question is not one simply for cases where the grant of an injunction is within the District Court's jurisdiction; it is for cases where the grant of an injunction is "necessary in aid of" the District Court's jurisdiction.

3. The purpose of the motion of the BLE, countenanced by the District Court and the Court of Appeals, is simply to make an injunction proceeding in the Federal court serve as substitute for the normal appellate procedures, including review by this Court, with respect to a judgment in the state court. Indeed, the only authority cited by the Court of Appeals was this Court's decision in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969), a decision which arose on certiorari to the state courts and which has nothing whatsoever to do with Section 2283 or the exceptional circumstances under which a lower Federal court may enjoin proceedings in a state court.¹² It is plain that the Court of Appeals took the view that despite the anti-injunction statute, it was at liberty to determine the correctness of the state court's order in the injunction proceedings in Federal court, and by its citation of the *Jacksonville Terminal* case, it indicated that it believed that the state court acted erroneously and that, accordingly, its judgment was properly enjoined. This is the very thing which

¹² If the theory of the courts below—that an injunction against state court proceedings issued by a Federal court can be made to serve as a substitute for the normal processes of appeal and certiorari in a labor preemption case, at least after a district court has refused, by reason of the Norris-LaGuardia Act, to enjoin the labor conduct in question—is correct, it was hardly necessary in the *Jacksonville Terminal* case itself for the brotherhoods to have pursued their remedies through the state courts and to this Court on certiorari. Since in that very case a Federal court injunction against the Jacksonville Terminal picketing had been held barred by the Norris-LaGuardia Act, *Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co.*, 362 F.2d 649 (5th Cir. 1966), *aff'd*, 385 U.S. 20 (1966), the same legal theory that is advanced here would have supported the District Court, upon receipt of the mandate of the Court of Appeals' holding the Federal injunction barred by reason of the Norris-LaGuardia Act, in enjoining the proceedings relating to the Jacksonville Terminal in the state court.

this Court's decision in *Richman Brothers* teaches may not be done. See point 1, pp. 16 *et seq.*, *supra*.

As we have demonstrated above, under the *Richman Brothers* decision of this Court, there is no basis for the Federal courts to consider a preemption defense or other Federal defense against state court proceedings, however well founded, through the extraordinary remedy of an injunction against the state court proceedings. But even if there were, we would call to the Court's attention that *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, *supra*, does not in any event establish that the BLE had a valid defense in the state court proceedings.

In the *Jacksonville Terminal* case decided on March 25, 1969, this Court, by a four-to-three plurality¹³ held that a state court injunction against picketing of the jointly-owned Jacksonville Terminal facility could not be maintained. The sharply-divided Court stressed the joint ownership of the Terminal Company facility by the struck FEC together with the other carriers (394 U.S., at 372) and the unusual nature of the joint venture agreement providing for the joint management of the facility by the FEC and the other carriers (394 U.S., at 373, n. 5). The fact that the Terminal Company provided various services necessary to the FEC's operations, including switching, signaling, track maintenance, and repairs on its cars and engines, was stressed. (394 U.S., at 373) The Court concluded, as had the Fifth Circuit in the case involving the Federal court injunction against picketing of the Terminal Company, that "despite the legal separateness of the Ter-

¹³ Justices Harlan, Brennan and White and former Chief Justice Warren formed the majority. Former Justice Fortas and Justice Marshall did not participate.

minal Company's entity and operation, it cannot be disputed that the facilities and services provided by the Terminal Company *in fact* constitute an integral part of the day-to-day operations of the FEC. . . ." (*Ibid.*)

In analyzing the legal issues and drawing upon an analogy to the situation prevailing under the National Labor Relations Act, the Court observed that if the "common situs" rules applied under that Act were applied to the facts of the Jacksonville Terminal property, "considering, for example, the FEC's regular business activities on the terminal premises, FEC's relationship with respondent and the other railroads using the premises, the mixed use in fact of the purportedly separate entrances, and the terminal's characteristics which made it impossible for the pickets to single out and address only those secondary employees engaged in work connected with FEC's ordinary operations on the premises—the state injunction might well be found to forbid petitioners [the unions] from engaging in conduct protected by the National Labor Relations Act." 394 U.S., at 389-90.

In the case of the Moncrief Yard, no such situation is presented. The Moncrief Yard is not part of the Jacksonville Terminal common facilities; while at one point it adjoins the Jacksonville Terminal properties, the functions performed in the two locations are completely different and the factors of common operation and use, so heavily relied upon by the Court in *Jacksonville Terminal*, are completely lacking as to the Moncrief Yard. The Moncrief Yard is owned solely by the Seaboard Coast Line Railroad. FEC neither exercises nor participates in the exercise of any managerial discretion at the yard. No SCL employees engaged in work connected with the FEC's operations work

there. The yard performs no services for the FEC. No FEC cars or engines are repaired or serviced there.

Moncrief Yard is not a mere interchange facility serving and controlled by a group of carriers. The primary purpose of Moncrief Yard is the classification of ACL rail traffic in no way connected with the FEC. The only relationship that the yard has with the FEC is "pick-up and delivery": FEC employees bring cars to the premises on a designated track, which cars are left to be picked up by SCL employees and included as part of SCL's on-going train movements and that, vice versa, SCL employees cut out from their trains cars which will be handled south-bound along the east coast of Florida by the FEC, to be picked up by FEC employees.¹⁴ That interchange is required by Federal law and mandated by an existing Federal court injunction. Interstate Commerce Act, 49 U.S.C. §§ 1(4), 1(11), 1(15), 1(17) and 3(4); *Florida East Coast R. Co. v. Jacksonville Terminal Co., et al.*, U.S.D.C., M.D. Fla., No. 63-16-Civ-J, Order of January 30, 1963. At the point when ACL employees refused to move rail cars in Moncrief Yard, the cars were legally and factually

¹⁴ In opposing the Stay Application in this Court, respondents claimed that Moncrief Yard "is an integral and necessary part of FEC's operations" and that the District Court's order of April 26, 1967, so held. This is not the case. All that that order found was that "The use of ACL's Moncrief Yard by FEC to receive and deliver freight is an integral and necessary part of FEC's operations." (Appendix A, p. 3a, *infra*; emphasis supplied.) There is a considerable difference. The holding simply means that FEC needs to interchange with carriers whose lines extend beyond Florida in order to carry on its business and that this interchange is in fact performed by the FEC dropping off and picking up cars at Moncrief Yard. The finding is not to the effect that Moncrief Yard is a place devoted to serving or doing the work of FEC, as this Court apparently held to be the case of the Jacksonville Terminal facilities in the *Jacksonville Terminal* case. 394 U.S., at 373.

"owned" and controlled by ACL; FEC had nothing more to do with them.

This Court has twice held that FEC employees could picket the Jacksonville Terminal, which this Court characterized as a "common situs" of FEC and the other carriers. 394 U.S., at 389-90. Curiously enough, the unions have not exercised this privilege and now seek to move north to picket a totally separate and innocent carrier at a location which can hardly be called a "common situs." Neither Federal law nor any established Federal labor policy or decision of this Court dictates that this picketing be free from restraint under state law. The assertion that it does means that any railway labor dispute which has matured to the point of self-help as between the parties may form the basis for an escalation of their economic conflict to involve innocent third-party carriers without apparent geographic limit. For if the Moncrief Yard can be tied up because FEC cars come there, other classification yards throughout the country through which those cars successively move could receive similar treatment. Even as applied to a "common situs" situation, the divided Court in the *Jacksonville Terminal* decision candidly characterized the result it reached as "unsatisfactory." 394 U.S., at 392. The Moncrief picketing does not involve the judiciary in the task of unraveling the problems of what sort of picketing might be permitted in a "common situs" situation, a task which the Court declined to undertake in *Jacksonville Terminal*. See *id.*, at 388-90. For the conclusion to be reached that there is a Federal inhibition against any interference with picketing as far removed from the normal processes of self-help by one disputant against the other as that presented here would be to stretch the facts

of *Jacksonville Terminal* well beyond their breaking point.¹⁵

Accordingly, even if it were somehow appropriate—despite Section 2283 and the *Richman Brothers* decision construing it—for the District Court to pass on the question whether there was a substantive basis for the state court injunction given this Court's decision in *Jacksonville Terminal*, the answer is that the state court did have a substantial basis for distinguishing the cases.¹⁶ While we submit that the difference in the facts recited above establishes a difference in legal treatment, certainly the question is substantial enough to forbid the District Court from engrafting another exception upon Section 2283 by short-circuiting the normal appellate review procedures with respect to the state court's order.

B. The District Court's Injunction Is Also Prohibited by the Norris-LaGuardia Act

Finally, although the District Court and the Court of Appeals uniformly ignored the point, it appears plain that

¹⁵ Certainly, the general language of the Court at the conclusion of its opinion in *Jacksonville Terminal*, 394 U.S., at 392-93, so often cited by the respondents in favor of a general *carte blanche* to engage in any and all activities against third parties (see, e.g., *Opposition to Application for Stay*, p. 4), must be read in the light of the specific facts presented in the *Jacksonville Terminal* case.

¹⁶ However, we also tender to the Court a third-level question, which we of course contend that the Court need not reach. That question is whether—assuming that despite *Richman Brothers* a state court order may be enjoined by a Federal court here consistently with § 2283, and assuming (which we again deny) that there is no controlling factual and legal distinction between the question of availability of state court remedies against picketing at Monerief Yard and the picketing at the jointly-owned Jacksonville Terminal facilities—the decision in the *Jacksonville Terminal* case, reached as it was by less than a majority of a grievously divided Court, should be reconsidered.

the District Court's injunction is violative of the Norris-LaGuardia Act's ban on injunctions. The District Court held that ACL's injunctive remedy against the picketing involved a case "arising out of a labor dispute" and hence fell within the Norris-LaGuardia Act's ban on injunctions. It must follow equally that the counter-injunction entered by the District Court against enforcement of the state court proceedings, which is based upon the same set of operative facts, likewise falls within the letter and the spirit of that Act.

In the first place, Section 4(d) of the Act absolutely prohibits injunctions against any person who is "aiding any person participating or interested in any labor dispute who . . . is prosecuting, any action or suit in any court . . . of any State." See Appendix I, p. 29a, *infra*. The briefest of references to the District Court's injunction (Appendix D, p. 18a, *infra*) makes it plain that this is precisely what the District Court has done. Secondly, Section 7 of that Act makes it plain that no Federal court has power to issue *any* injunction "in any case involving or growing out of a labor dispute" except upon the fulfillment of certain procedures and the making of certain findings, including a finding "that complainant has no adequate remedy at law." Clearly the availability of the normal appellate remedies to the BLE in the Florida state courts and in this Court would preclude the making of any such finding; and, indeed, there was not even any pretense in the District Court of making *any* findings in accordance with Section 7 of the Act.¹

¹ In opposing the Stay Application, the BLE contended that the Norris-LaGuardia Act was not applicable because the conduct enjoined by the District Court was not conduct of the sort protected against injunctions by § 4 of the Act. Opposition, pp. 11-12. This contention is wrong for a number of reasons. In the first

The only argument that can be made against the applicability of the Norris-LaGuardia Act here appears to be the general argument, made by BLE, that the Norris-LaGuardia Act does not apply to injunctions against management as opposed to those against labor.² The only support for this startling proposition is a dictum in *Brotherhood of Locomotive Engineers v. Baltimore & O.R. Co.*, 310 F.2d 513, 518 (7th Cir. 1962). The dictum in that case stands alone for this remarkable general proposition, a proposition which finds no support in the statutory text. Where this Court has upheld the grant of an injunction against management despite the Norris-LaGuardia Act, by reason of the necessity in a specific case of accommodating that Act to other statutes, it has taken pains to avoid any such sweeping proposition. See, e.g., *Textile Workers Union v. Lincoln Mills*, 353 U.S. 488, 457-59 (1957).

The Act does not prohibit injunctions simply against labor or simply against management; it denies the courts of the United States jurisdiction, subject to certain exceptions, to issue any injunction "in any case involving or growing out of a labor dispute." It is clear that the contention that the Norris-LaGuardia Act does not apply here, which was upheld by the courts below, can only be supported by reference to arguments of extraordinary breadth and char-

place, Sections 4 and 7 are independent prohibitions; an injunction is barred if it violates either section. In the second place, as we have indicated above, Section 4(d) was in fact violated by the injunction.

² The BLE relied upon this argument in opposing the Stay Application. Opposition, p. 12.

acter; this factor in itself suggests that this question is one calling for the attention of this Court.

CONCLUSION

This case presents important issues arising under Section 2283 of the Judicial Code, and involves an apparent departure by the lower courts from the controlling precedents in this Court under that statutory provision. Moreover, even if the lower courts were correct in their application of Section 2283, there are serious questions as to their construction of this Court's substantive decision in the *Jacksonville Terminal* case.³ Important issues as to the application of the Norris-LaGuardia Act are also presented.

As Mr. Justice Black recognized in granting the Stay Application, this case, involving the picketing of a major rail artery of the SCL into peninsular Florida, poses questions "broadly affect[ing] the economy of the State of Florida [and] the United States." (Appendix F, p. 23a, *infra*) Rail transportation into peninsular Florida will be grievously affected should the action of the lower courts in enjoining the proceedings in the state court be permitted to stand. Thus, with the legally important issues, the factual importance of the case at bar unites in making this case an appropriate one for certiorari.

³ If this question is reached, and if it is determined that the courts below accurately construed this Court's decision in *Jacksonville Terminal*, we also suggest that this case is an appropriate vehicle to determine whether that decision, rendered by a grievously-divided Court, should be reconsidered. See n. 16, p. 32, *supra*.

Accordingly, for the reasons stated, this petition for certiorari should be granted.

Respectfully submitted,

DENNIS G. LYONS

1229 Nineteenth Street, N. W.
Washington, D. C. 20036

FRANK X. FRIEDMANN, JR.

DAVID M. FOSTER

1300 Florida Title Building
Jacksonville, Florida 32202

Attorneys for Petitioner

Of Counsel:

JOHN W. WELDON

JOHN B. CHANDLER, JR.

ROGERS, TOWERS, BAILEY, JONES & GAY

JOHN S. COX

COX & WEBB

Jacksonville, Florida

ARNOLD & PORTER

Washington, D. C.

August, 1969

APPENDIX A

Order Denying Application of Plaintiff for Temporary Injunctive Relief—Federal Case—April 26, 1967

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-335-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,

v.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE DIVI-
SION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS;
et al.,
Defendants.

This cause came on to be heard on April 25, 1967, upon the plaintiff's application for temporary injunctive relief against defendants. Upon evidence introduced by plaintiff and defendants, and upon arguments by respective counsel, the Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. The plaintiff, Atlantic Coast Line Railroad Company (ACL), is an interstate railroad company, subject to the Interstate Commerce Act, 49 U.S.C. § 1, et seq., and the Railway Labor Act, 45 U.S.C. § 151, et seq.

2. The defendant, Brotherhood of Locomotive Engineers (BLE), is a labor organization under the Railway Labor Act which represents the craft of locomotive engineers employed on many railroads including the plaintiff, ACL, and the Florida East Coast Railway Company (FEC). The individual defendants are officers or members of BLE.

3. In 1964 FEC issued to BLE a proposal under Section 6 of the Railway Labor Act, 45 U.S.C. § 156, to change the rules, rates of pay and working conditions of FEC engineers. This proposal was processed under the procedures of the Railway Labor Act. In February, 1967, the National Mediation Board proffered arbitration to FEC and to BLE. BLE accepted arbitration of the dispute and FEC declined. The procedures of the Railway Labor Act having been exhausted, on March 13, 1967, FEC unilaterally put into effect the proposed contract revisions for engineers, and BLE called a strike against FEC.

4. At its northern terminus in Jacksonville, Florida, FEC interchanges freight traffic with ACL, Seaboard Air Line Railroad Company and Southern Railroad Company. This interchange is made with Seaboard and Southern upon the premises of the Jacksonville Terminal Company. Interchange between FEC and ACL is performed in the Moncrief Yard facility of ACL. FEC trains operated by striker replacement crews daily enter and operate in this ACL yard for the purpose of delivering and receiving interchange traffic. This interchange traffic averages 420 cars per day or over 150,000 cars per year. The interchange of freight with ACL constitutes approximately 60% of all freight received and delivered by FEC at its northern terminus.

5. The use of ACL's Moncrief Yard by FEC to receive and deliver freight is an integral and necessary part of FEC's operations.

6. Commencing on Sunday, April 23, 1967, BLE caused pickets to be placed at the employee entrance to Moncrief Yard. These pickets, by signs and pamphlets, requested the ACL employees to refuse to handle interchange traffic to and from FEC. Since the picketing commenced ACL engineers have refused to deliver freight to those tracks in Moncrief Yard designated for delivery to FEC, and have refused to receive freight from those tracks where FEC trains and crews have placed freight for delivery to ACL.

7. The effect of this picketing will be to deprive FEC of freight traffic to and from ACL. In addition, it will cause severe congestion of ACL's Moncrief Yard.

Conclusions of Law

1. This suit arises under the Railway Labor Act, 45 U.S.C. § 151 et seq., and the Interstate Commerce Act, 49 U.S.C. § 1, et seq. This Court has jurisdiction of the case under 28 U.S.C. § 1337.

2. The Interstate Commerce Act regulates the relationships among interstate railroad carriers and between such carriers and the public. The Railway Labor Act regulates the relationships between railroad carriers and railroad employees.

3. The parties to the BLE-FEC "major dispute", having exhausted the procedures of the Railway Labor Act, 45 U.S.C. § 151, et seq., are now free to engage in self-help.

Brotherhood of Locomotive Engineers v. Baltimore & O. R.R., 372 U.S. 284 (1963).

4. The conduct of the FEC pickets and that of the responding ACL employees are a part of the FEC-BLE major dispute. *Brotherhood of Locomotive Firemen and Enginemen v. Florida East Coast Ry.*, 346 F. 2d 673 (5th Cir. 1965).

5. The conduct of the ACL employees creates neither a major nor a minor dispute with ACL. See *Chicago & Illinois Midland Ry. v. Brotherhood of R.R. Trainmen*, 315 F. 2d 771, 776 (7th Cir. 1963) (Swygert, J., dissenting).

6. The "economic self-interest" of the picketing union in putting a stop to the interchange services daily performed within the premises of plaintiff's yard facilities, and in the normal, day-to-day operation of FEC trains operating with strike replacement crews within these facilities is present here. The "economic self-interest" of the responding employees in refusing to handle this interchange and in making common cause with the striking FEC engineers is similarly present. *Brotherhood of R.R. Trainmen v. Atlantic Coast Line R.R.*, 362 F. 2d 649 (5th Cir.), *aff'd*, 385 U.S. 20 (1966).

7. The Norris-LaGuardia Act, 29 U.S.C. § 101, and the Clayton Act, 29 U.S.C. § 52, are applicable to the conduct of the defendants here involved. See *Brotherhood of Locomotive Firemen and Enginemen v. Florida East Coast Ry.*, 346 F. 2d 673 (5th Cir. 1965); *Brotherhood of R.R. Trainmen v. Atlantic Coast Line Railroad*, 362 F. 2d 649 (5th Cir.), *aff'd*, 385 U.S. 20 (1966).

5a

Upon consideration, it is

ORDERED that plaintiff's application for temporary injunctive relief is denied.

DONE AND ORDERED at Jacksonville, Florida, this 26th day of April, 1967.

/s/ Wm. A. McRAE, JR.

Judge

Copies to counsel .

APPENDIX B

**Order for Temporary Injunction—State Case—
May 3, 1967**

**IN THE
CIRCUIT COURT OF THE FOURTH
JUDICIAL CIRCUIT**

IN AND FOR DUVAL COUNTY, FLORIDA

Case No. 6735-36-

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood; and G. Q. RUTLAND, individually and as a member of said Brotherhood,

Defendants.

This cause came on to be heard upon plaintiff's verified complaint and upon plaintiff's prayer for a temporary injunction. The Court has considered the evidence in support of plaintiff's prayer for a temporary injunction and has considered the arguments of counsel. The Court finds as follows:

1. This action arises under the Constitution and Laws of the State of Florida, including the Declaration of Rights of the Florida Constitution; the Florida Restraint of Trade Laws, Chapter 542, Florida Statutes; the Florida Labor Laws, Chapter 447, Florida Statutes; and the Florida Transportation Act, Chapter 350, Florida Statutes. This court has jurisdiction of the subject matter and of the parties hereto.

2. Plaintiff, Atlantic Coast Line Railroad Company (hereinafter "ACL") is a common carrier authorized to do business in the State of Florida. Plaintiff as a common carrier serves numerous communities within the State of Florida, in addition to the City of Jacksonville and County of Duval and provides extensive passenger, mail, freight, including perishable freight, bill and express laden services to these communities. Plaintiff is further obligated under the aforesaid Florida Transportation Act to provide interchange services with various connecting railroad common carriers including the Florida East Coast Railway Company (hereinafter "FEC").

3. Defendant Brotherhood of Locomotive Engineers (hereinafter "BLE") is an unincorporated labor organization composed solely of members who are employees of railroad carriers subject to the Railway Labor Act, 45 U.S.C. §151, et seq. Defendant J. E. Sims is Assistant Grand Chief Engineer of the BLE, and by his own admission is in charge of promoting the acts hereinafter enjoined. The other defendants, individually and as agents of defendant Brotherhood, have participated in active concert with defendant Sims. The members of the BLE employed by the FEC are on strike against the FEC. The ACL has valid

labor agreements between its employees represented by their respective Brotherhoods, including defendant BLE, which are presently in full force and effect. There is no labor dispute of any kind between ACL and its employees which gives rise to the acts hereby enjoined. There is no labor agreement or labor dispute between ACL and the employees of FEC.

4. On Sunday, the 23rd day of April 1967, the BLE and the Local Lodge Division 823 of BLE by and through their officers and members, including individual defendants J. D. Sims, J. E. Eason, H. M. Sawyer, W. K. Morris and G. Q. Rutland, proceeded to picket and patrol at employee entrances to the property and interchange yard of the ACL in Duval County, Florida, known as Moncrief Yard and to disburse pamphlets to the ACL employees going to work through said entrances. The express and manifest intent of the defendants in distributing the pamphlets was to induce the employees of ACL in Moncrief Yard to refuse to handle, move or carry out their regularly assigned duties with regard to any ACL railroad car which had arrived in Moncrief Yard from the FEC or which had arrived in Moncrief Yard destined to the FEC. Defendants also seek to induce and coerce plaintiff to refuse interchange with the FEC and thus to prevent competition in transportation of commodities by FEC. The avowed purpose of the picketing is to cause the plaintiff and its employees to cease furnishing interchange to the FEC and thus to bring the operation of the FEC to a halt; the result of the picketing is considerably more broad, as stated below. The intent and purpose of this picketing and distribution of pamphlets was not lawfully to advertise or to advise either the public in general or the employees of the ACL of the BLE labor

dispute with FEC but was to accomplish various purposes, described below, which are in violation of the law of the State of Florida.

5. As a result of the inducement and coercion by the BLE and other defendants through picketing of the ACL employee entrances and through the distribution of pamphlets, the employees of ACL in Moncrief Yard have refused to handle, move or interchange any ACL railroad car arriving from or destined to the FEC, which refusal has had and will have the following results:

(a) Disruption of the interchange operations of the ACL in Moncrief Yard;

(b) Effective blockade of railroad cars destined to points within and without the County of Duval and State of Florida;

(c) Stoppage of cars handling perishable goods and United States mail;

(d) Inability to properly serve shippers within and without the County of Duval due to interference with traffic patterns and schedules and due to the necessity of using supervisory personnel from other points on the ACL to operate Moncrief Yard;

(e) Interference with the effective interchange of freight to and from other connecting railroad common carriers, including the Jacksonville Terminal Company, the Seaboard Air Line Railroad Company, Southern Railway System, FEC and others;

(f) Substantial loss of profits and revenue to ACL by diversion of traffic and loss of traffic.

The picketing and other aforementioned activities of defendants, if resumed, will cause plaintiff irreparable harm for which no adequate remedy at law exists and will adversely affect all of the people who are serviced by and do business with plaintiff and all railways served by plaintiff. It would further adversely affect large economic areas of the State of Florida which rely upon rail service by plaintiff. Far greater injury will be inflicted upon plaintiff, employees of plaintiff, and citizens of the State of Florida by denial of plaintiff's application for temporary injunction than will result to defendants by granting such relief.

6. The decision of this Court is not made upon the basis of violence. There is no evidence in the record of any violence or threat of violence involved in the picketing.

7. The picketing and distribution of pamphlets by the defendants is illegal under the law of the State of Florida for the following reasons:

(a) The defendants' acts constitute coercive pressure on the ACL and its employees which is unlawful and contrary to the established public policy of the State of Florida;

(b) The picketing is outside the area of the struck industry, the FEC, in violation of the aforesaid Florida Labor Law, and is in the nature of a secondary boycott;

(c) The defendants seek to force plaintiff to violate its statutory duties under the aforesaid Florida Transportation Act to provide service to its various shippers and to provide interchange service to the FEC, which is illegal not only under the Florida Transportation Act, but also under the aforesaid Florida Restraint of Trade Laws;

(d) The inducements and coercions of defendants constitute a tortious interference with the contractual relationship between ACL and its employees and between ACL and its various shippers;

(e) Said inducements and coercions of defendants constitute an unwarranted and unconstitutional interference with the business of the ACL and constitute a tortious interference with the prospective business advantage of ACL; and

(f) Said actions operate as a restraint upon trade in violation of the Florida Restraint of Trade Laws and seek to compel ACL and its employees to enter into a combination with defendants to prevent competition in transportation of merchandise, produce and commodities by FEC.

IT IS, THEREFORE,

ORDERED that the defendants, Brotherhood of Locomotive Engineers, Local Lodge Division 823 of the Brotherhood of Locomotive Engineers, J. E. Eason, J. D. Sims, H. M. Sawyer, W. K. Morris, G. Q. Rutland, individually, and their officers, agents, servants, employees, representatives and members, when said members are acting as officers, agents, servants, employees or representatives of defendants, and all other persons acting at the direction of or in concert or participation with defendants, are temporarily enjoined from:

1. Picketing the property owned and operated by plaintiff in Duval County, Florida, known as Moncrief Yard.
2. Causing, directing, authorizing, recommending, sanctioning or participating in the patrolling, picketing or

blockading of entrances or exits used by employees of plaintiff in connection with their work or in connection with plaintiff's land, buildings, facilities or other property owned or controlled by plaintiff in Duval County, Florida, known as Moncrief Yard.

3. Causing, directing, recommending, or inducing or attempting to induce the employees of plaintiff who report to work at the property owned and controlled by plaintiff known as Moncrief Yard, to cease performing any of their regularly assigned duties of their employment, including specifically the distribution of literature to plaintiff's employees recommending, causing, directing or inducing plaintiff's employees to cease performing such duties.

4. Interfering in any way with the operation of plaintiff's property located in Duval County, Florida, known as Moncrief Yard.

The defendant labor organizations, their appropriate officers, agents, servants and employees and the other defendants herein are directed and mandatorily enjoined to withdraw and countermand any order, directive, recommendation, request or other advice, heretofore issued by any of defendants' officers, agents or members, asking or inducing any of plaintiff's employees working on plaintiff's property known as Moncrief Yard not to carry out certain of their regularly assigned duties in connection with the operation of said Moncrief Yard by the plaintiff.

This injunction is limited to the picketing and other aforementioned actions of defendants arising out of defendants' existing disputes with the Florida East Coast Railway Company.

This temporary injunction shall become effective upon the filing by plaintiff and acceptance by the Clerk of this

Court of a good and sufficient bond in favor of defendants
in the amount of Twenty-Five Thousand (\$25,000) Dollars.

DONE AND ORDERED in Chambers at Jacksonville, Duval
County, Florida, this 3d day of May, 1967.

/s/ CHARLES A. LUCKIE
Circuit Judge

APPENDIX C

Letter Opinion Denying Motion to Dissolve State Court Injunction and Making Injunction Permanent— June 3, 1969

CHAMBERS OF
CHARLES A. LUCKIE
CIRCUIT JUDGE
COUNTY COURTHOUSE
JACKSONVILLE, FLORIDA 32202

June 3, 1969

Rogers, Towers, Bailey, Jones & Gay, Esquires
1300 Florida Title Building
Jacksonville, Fla. 32202
Attn: David M. Foster

Gentlemen:

Re: Atlantic Coast Line
Railroad Company vs.
B.L.E., etc.

I find it very difficult to reconcile the final conclusion made by the Court in the case of the Brotherhood of Railway Trainmen vs. Jacksonville Terminal Company; and impossible to do so unless the conclusion is confined to the particular case then before that Court. The court concludes its opinion by making the flat statement that, " . . . until Congress acts, picketing—whether primary or secondary—must be deemed conduct protected against state proscription." But it is quite apparent from the remainder of the opinion that the Court did not intend to say that

ALL secondary picketing is "conduct protected against state proscription."

The opinion contains the following statements: "We are presented, then, with the problem of *delineating the area* of labor combat protected against infringement by the States." It further states: "It is difficult to formulate many generalizations governing common situs picketing, but it is clear that secondary employers are not *necessarily* protected against picketing aimed directly at their employees." And, "• • • *to condemn all of the petitioners' picketing which carries any 'secondary' implications would be to paint with much too broad a brush.*" Also, "• • • the Railway Labor Act permits employees to engage in *SOME* forms of self-help, free from state interference, *IBID.*" further, "• • • it cannot categorically be said that *ALL* picketing carrying 'secondary' implications is prohibited, Part VII, SUPRA." (Emphasis by italics supplied; Court emphasis by Capitalization.)

Therefore, the Court having plainly indicated that *SOME* forms of secondary picketing may be prohibited by the States, I cannot reconcile the flat statement first quoted in this letter with the remaining statements in the opinion unless I conclude that the flat statement made by the Court related only to the facts before it in that particular case. Consequently, the motion to dissolve the injunction will be denied and, at the request of counsel for the Defendants, the injunction will be made permanent. Please consult Allan Milledge and prepare such Order.

Very truly yours,

/s/ CHARLES A. LUCKIE

CAL:bs

cc: Milledge and Horn, Esquires

APPENDIX D

**Order of Federal Court Enjoining State Court
Proceedings—June 19, 1969
(Entered June 20, 1969)**

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-335-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Plaintiff,

v.

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE DIVI-
SION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS;
*et al.,***
Defendants.

On June 6, 1969, a hearing was held in the above entitled cause upon Defendants' Motion for Preliminary Injunction, filed June 4, 1969, and upon Plaintiff's Notice of Voluntary Dismissal and Motion for Voluntary Dismissal.

It appears that Plaintiff's purported Notice of Voluntary Dismissal is without effect, as Defendants had, prior to Plaintiff's "notice", filed an Answer herein on May 27, 1969. Fed. R. Civ. P., Rule 41(a)(1). Furthermore, Plaintiff has failed to show that the Answer was filed merely to foreclose a voluntary dismissal. See *Kohloff v. Ford*

Motor Co., 29 F. Supp. 843 (S.D.N.Y. 1939); *Flaig v. Yellow Cab Co.*, 4 F.R.D. 174 (W.D.Mo. 1944).

As the Court is of the opinion that Defendants' Motion for Preliminary Injunction, has merit, Plaintiff's Motion for Voluntary Dismissal under Rule 41(a)(2), Fed. R. Civ. P., will be denied.

Defendants seek to have this Court enjoin Plaintiff from availing itself of the Order for Temporary Injunction entered May 3, 1967, in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, in Case No. 67-3536, Division E. The state court order enjoined the picketing activities of Defendants as against the Plaintiff herein on the ground that the picketing violated state law.

Defendants herein contend that this Court should enter its injunction on the ground that it is necessary in aid of this Court's jurisdiction, and to protect and effectuate the judgment of this Court dated April 26, 1967. 28 U.S.C. § 2283.

Plaintiff argues that *Amalgamated Clothing Workers v. Richman Bros.*, 348 U.S. 511 (1955), requires this Court to allow the state proceedings to continue without interference. Plaintiff's reliance is misplaced, however, for in *Richman* the District Court could issue no injunction in aid of its jurisdiction because the District Court had no jurisdiction to aid. There the District Court's jurisdiction was preempted by that of the National Labor Relations Board. In the instant case, however, this Court has jurisdiction (see Order of April 26, 1967, Conclusion of Law No. 1) and may grant injunctive relief in aid thereof.

In its Order of April 26, 1967, this Court found that Plaintiff's Moncrief Yard, the area in question, "is an integral and necessary part of [Florida East Coast Railway Company's] operations." Finding of Fact No. 5. The Court concluded furthermore that Defendants herein "are now

free to engage in self-help." Conclusion of Law No. 3. The injunction of the state court, if allowed to continue in force, would effectively nullify this Court's findings and delineation of rights of the parties. The categorization of Defendants' activities as "secondary" does not alter this state of affairs. See *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, — U.S. —, 22 L.Ed. 2d 344 (1969). The prohibition of 28 U.S.C. § 2283, therefore, does not deprive this Court of jurisdiction to enter the injunction in this instance. *Capital Service, Inc. v. NLRB*, 347 U.S. 501 (1954); *Brotherhood of Ry. Trainmen v. Board of Trustees of Galveston Wharves*, 400 F.2d 320 (5th Cir. 1968).

It is, therefore,

ORDERED:

1. Plaintiff's Motion for Voluntary Dismissal is denied.

2. Plaintiff, Atlantic Coast Line Railroad Company (merged predecessor of Seaboard Coast Line Railroad Company), its agents, servants, employees and attorneys and all persons in active concert and participation with them, are enjoined from giving effect to or availing themselves of the benefits of the Order for Temporary Injunction entered May 3, 1967, in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, Case No. 67-3536, Division E, pending the final hearing and determination of this action.

DONE AND ORDERED at Jacksonville, Florida, this 19th day of June, 1969.

/s/ Wm. A. McRAE, JR.

Judge

Copies to counsel

APPENDIX E

**Order of Court of Appeals for the Fifth Circuit
Denying Stay—July 7, 1969**

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 28064**

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Appellant,

versus

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVI-
SION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
*et al.,***

Appellees.

**Appeal from the United States District Court
for the Middle District of Florida**

Before BELL, AINSWORTH and GODBOLD, *Circuit Judges.*

By the Court:

**IT IS ORDERED that the appellant's application for stay of
injunction pending appeal, filed in the above styled and**

numbered cause, is hereby DENIED. Brotherhood of Railroad Trainmen, et al., Petitioners, v. Jacksonville Terminal Co., 89 S. Ct. 1109 (1969).

In view of the importance of the case it is provided, however, that a temporary stay of enforcement of the District Court's injunction be hereby granted for a period of 10 days only from the date of issuance of this order, to enable the parties to seek such further relief as they may desire.

APPENDIX F

**Opinion of Mr. Justice Black on Grant of Application
for Stay—July 16, 1969**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

ATLANTIC COAST LINE RAILROAD CO.,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS et al.

APPLICATION FOR STAY**[July 16, 1969]****MR. JUSTICE BLACK, Circuit Justice.**

This is an application presented to me by the railroad to stay enforcement of an injunction issued by the United States District Court for the Middle District of Florida against the enforcement of a state court injunction restraining the union from picketing around the Moncrief Yard in Florida, a classification yard owned by the Seaboard Coast Line, the successor company to the Atlantic Coast Line Railroad. The picketing is being carried on because of a strike against the Florida East Coast Railway by its employees; there is no dispute between the Seaboard Coast Line or the Atlantic Coast Line and their employees. The union wishes to picket the Moncrief Yard, however, because

many of the Florida East Coast cars are switched into it in order to carry on the railroad's business.

At the last Term of this Court we had before us a question involving the picketing of the Jacksonville Terminal Company at Jacksonville, Florida, owned and operated by the Florida East Coast, Seaboard, Atlantic Coast Line, and Southern railroads. There an injunction was granted in the Florida state courts to restrain the union from picketing the entire terminal. This Court in a 4 to 3 opinion decided that the picketing was protected by federal law and therefore could not be enjoined by Florida. *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U. S. 369 (1969). The union here substantially relies on that case, insisting that it has the same federally protected right to picket at the Moncrief Yard that this Court held it could exercise at the Jacksonville Terminal. The district court here enjoined the railroad from utilizing a state court injunction against picketing at Moncrief and refused the railroad's request to stay the effectiveness of its injunction pending appeal. The Court of Appeals, however, did grant an application to suspend the effectiveness of the district court injunction for ten days, which expires tomorrow—July 17th. The question before me is whether I should suspend the effectiveness of that injunction pending a review of the district court's judgment.

Since 1793 a congressional enactment, now found in 28 U. S. C. § 2283, has broadly provided that federal courts cannot, with certain limited exceptions, enjoin state court proceedings. Whether this long-standing policy is violated by the district court's injunction here presents what appears to me to be a close, highly complex and difficult question. Not only does it present a difficult problem but it is

one of widespread importance, the solution of which might broadly affect the economy of the State of Florida, the United States, and interstate commerce. Under these circumstances I do not feel justified in permitting the district court injunction to be enforced, changing the status quo at Moncrief Yard, until this Court can act for itself on the questions that will be presented in the railroad's forthcoming application for certiorari. For this reason an order will be issued staying the enforcement of the district court injunction pending disposition of the petition for certiorari in this Court. To accomplish this result without undue delay it will be the duty of the railroad to expedite all actions necessary to present its petition for certiorari here.

APPENDIX G

**Order of Mr. Justice Black Granting Stay
Application—July 16, 1969**

SUPREME COURT OF THE UNITED STATES

No., OCTOBER TERM, 1969

ATLANTIC COAST LINE RAILROAD COMPANY,

Petitioner,

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.

UPON CONSIDERATION of the application of counsel for the petitioner and of the opposition of the respondents thereto,

IT IS ORDERED that the injunction order of the U. S. District Court for the Middle District of Florida of June 19, 1969 be, and the same is hereby, stayed pending the expeditious filing of a petition for a writ of certiorari. Should such a petition be so filed, this stay is to continue pending the action of the Court on such petition. Should the petition for a writ of certiorari be denied, this stay is to expire immediately. In the event the petition for a writ of certiorari is granted, this stay is to remain in effect pending the issuance of the judgment of this Court.

/s/ HUGO L. BLACK

*Associate Justice of the Supreme
Court of the United States*

Dated this 16 day of July, 1969.

APPENDIX H

**Judgment of Court of Appeals Affirming Injunction
of District Court—July 17, 1969**

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 28064

D. C. Docket No. Civ. 67-335-J.

ATLANTIC COAST LINE RAILROAD COMPANY,

Appellant,

versus

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVI-
SION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS;
*et al.,***

Appellees.

**Appeal from the United States District Court
for the Middle District of Florida**

Before BELL, AINSWORTH and GODBOLD, *Circuit Judges.*

**The parties in the captioned cause have filed a stipula-
tion for entry of judgment as follows:**

**"The Court may enter a judgment on the merits of the
appeal from the District Court's order dated June 19,**

1969, without further briefing or oral argument affirming such order of the District Court, such stipulation by appellant to be without prejudice to appellant's rights to further judicial review. David Foster attorney for appellant. Allan Milledge attorney for appellees."

Pursuant to the foregoing stipulation it is accordingly hereby ordered and adjudged, by this Court, without further briefing or argument that the judgment of the District Court be hereby affirmed, without prejudice to appellant's rights to further judicial review. Brotherhood of Railroad Trainmen, et al., Petitioners v. Jacksonville Terminal Co., 89 S. Ct. 1109 (1969).

APPENDIX I

The Norris-LaGuardia Act

The text of the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C. §§ 101 *et seq.*, is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

"SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and con-

ditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

"SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

"Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

"(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

"(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

"SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

"SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

"SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

"SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed

and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

“(b) That substantial and irreparable injury to complainant’s property will follow;

“(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

“(d) That complainant has no adequate remedy at law; and

“(e) That the public officers charged with the duty to protect complainant’s property are unable or unwilling to furnish adequate protection.

“Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant’s property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant’s property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall be-

come void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

"The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

"SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

"SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or

growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

"SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certifying as in ordinary cases the record of the case to the court of appeals for its review. Upon the filing of such record in the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character."

[Sections 11 & 12 have been repealed, c. 645, § 21, 62 Stat. 862 (1948)]

"SEC. 13. When used in this Act, and for the purposes of this Act—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the

same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employees or associations of employees; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

"SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

"SEC. 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed."

SEP 18 1969

IN THE
Supreme Court of the United States DAVIS, CLERK

OCTOBER TERM, 1969

No. 477

ATLANTIC COAST LINE RAILROAD COMPANY,
Petitioner,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION
823 of THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E.
EASON, individually and as an official of said Brotherhood;
J. D. SIMS, individually and as an official of said Brotherhood;
H. M. SAWYER, individually and as a member of said Brother-
hood; W. K. MORRIS, individually and as a member of said
Brotherhood; and G. W. RUTLAND, individually and as a mem-
ber of said Brotherhood,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONER

DENNIS G. LYONS
1229 Nineteenth Street, N. W.
Washington, D. C. 20036

FRANK X. FRIEDMANN, JR.
DAVID M. FOSTER
1300 Florida Title Building
Jacksonville, Florida 32202

Attorneys for Petitioner

September, 1969

Of Counsel:

JOHN W. WELDON
JOHN B. CHANDLER, JR.
ROGERS, TOWERS, BAILEY, JONES & GAY
JOHN S. COX
COX & WEBB
Jacksonville, Florida

ARNOLD & PORTER
Washington, D. C.

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
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**A. The Anti-Injunction Statute, Section 2283
of the Judicial Code**

1. Respondents insist that the Federal District Court's April 26, 1967, order (Pet. App. A, pp. 1a-5a) amounts to a comprehensive declaration of the rights of the ACL, a third party to the labor dispute between the FEC and the BLE (Br. Op., pp. 12-13), rather than an order denying the ACL

temporary injunctive relief on the basis of the Norris-LaGuardia Act. While we do not believe that the way in which this point is resolved need have any legal consequences (see point 2, pp. 3-8, below), it is worthwhile to observe that, with one exception, each of the case authorities cited or relied upon by the District Court in its conclusions of law in that order itself turns on the Norris-LaGuardia Act.¹ See *Brotherhood of Locomotive Firemen and Enginemen v. Florida East Coast R. Co.*, 346 F.2d 673, 675 (5th Cir. 1965);² *Chicago & I.M.R. Co. v. Brotherhood of Railroad Trainmen*, 315 F.2d 771, 777-78 (7th Cir. 1963) (dissenting opinion of Swygert, J., relied upon by the District Court); *Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co.*, 362 F.2d 649, 653-55 (5th Cir. 1966), *aff'd by an equally-divided Court*, 385 U.S. 20 (1966).³ Thus, a perusal of the authorities cited by the District Court in its April 26, 1967, order makes it plain that the point of that order is that the Norris-LaGuardia Act prevented the issuance of a Federal court injunction against the secondary picketing charged in the complaint. As we pointed out in the petition (Pet., p. 24), the subsidiary conclusions of law of the District Court simply are articulations of the reasons why the Norris-LaGuardia Act was held applicable to bar the injunction, notwithstanding the "accommodation" cases which indicate that where the Railway Labor Act processes are

¹ The exception is *Brotherhood of Locomotive Engineers v. Baltimore & O. R. Co.*, 372 U.S. 284 (1963). In that *per curiam* decision all that was held was that where the primary parties to a railway labor dispute have exhausted the procedures of the Railway Labor Act, they are entitled to use self-help against each other.

² "Thus, the literal language of the Norris-LaGuardia Act covers the situation presented here." 346 F.2d, at 675.

³ "[W]e here deal only with the enjoynability of appellants' [the brotherhoods'] activity and not with its legality for any other purpose." 362 F.2d, at 653.

still available between the parties the Norris-LaGuardia Act does not bar an injunction.⁴ Indeed, in the hearing which led to the April 26, 1967, order, counsel for the respondents expressly stated that he was basing his case solely on the bar of the Norris-LaGuardia Act. See Pet., p. 22, n. 8.⁵

2. In any event, whether the April 26, 1967, order of the District Court declining to issue an injunction against the secondary picketing amounted to a declaration of the ACL's substantive rights under Federal law or not, the District Court was still without power, under Section 2283, to enjoin the proceedings in the state court. Respondents contend that the District Court's June 19, 1969, action is authorized by the exceptions to Section 2283 which permit

⁴ Respondents repeatedly (Br. Op., pp. 7, 12) urge that the passing citation of § 20 of the Clayton Act, 29 U.S.C. § 52, in conclusion 7 of the District Court's April 26, 1967, order (Pet. App. A, p. 4a), establishes that the District Court's order in fact amounted to a declaration of the parties' substantive rights. The second paragraph of § 20 does contain a provision that certain acts enumerated in that paragraph shall not "be considered or held to be violations of any law of the United States." However, the first paragraph of the section, which is broader in scope, is a simple anti-injunction provision, a distant forbear of the Norris-LaGuardia Act. The District Court's order does not indicate whether it is relying on the first paragraph or the second paragraph of § 20. However, the two cases cited in conclusion 7, *Brotherhood of Locomotive Firemen and Enginemen*, *supra*, and *Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co.*, *supra*, are both simply anti-injunction cases; this makes it evident that the reference to § 20 of the Clayton Act simply was for the proposition that the respondents' conduct was not subject to Federal court injunction.

⁵ The District Judge who entered the April 26, 1967, order was the same District Judge who had originally enjoined the picketing at the Jacksonville Terminal properties in 1966, only to be reversed by the Court of Appeals for the 5th Circuit in *Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co.*, 362 F.2d 649, *affirmed by an equally-divided Court*, 385 U.S. 20 (1966), solely on the basis of the Norris-LaGuardia Act.

a District Court to enjoin state court proceedings "where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." But even a declaration by a Federal court as to the rights of the parties under Federal law—or, more precisely, the absence of any right under Federal law for the ACL to obtain a Federal court injunction against the BLE—would not create a situation where it would be either "necessary in aid of its jurisdiction" or necessary "to protect or effectuate its judgments" for the District Court to enjoin the pursuit of state law remedies in the state courts by a party victimized by the secondary picketing.

The sole basis for the respondents' contention to the contrary is this Court's decision last term in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969). That case is distinguishable factually and legally from the present one. See point 3, pp. 8-10, below. But even if it were not, there still would be no ground for an exception under Section 2283. In that decision, this Court expressly and repeatedly held that the Florida courts were not deprived of jurisdiction over a third party's suit against a railway labor organization to obtain relief from allegedly secondary picketing. 394 U.S., at 382, 390. Thus,

* Even paragraph two of the respondents' favorite statutory antique, § 20 of the Clayton Act, only defines certain matters which are not "to be considered or held to be violations of any law of the United States." See Br. Op., p. 7, emphasis supplied. Accordingly, the reference in passing to this statute in the District Court's April 26, 1967, order, even if we assume it is to paragraph two (see n. 4, p. 3, *supra*), hardly furnishes a basis on which it could be claimed that the state court proceedings under state law were an affront to the Federal court's jurisdiction or its judgment. This Court's decision in the *Jacksonville Terminal* case that in certain circumstances the state courts are precluded from applying state law in cases involving railway labor disputants does not rely on the Clayton Act at all, although the brotherhoods cited that Act nine times in their brief to this Court in that matter.

it cannot be alleged that the District Court's injunction against the state court proceedings was designed to aid an exclusive Federal jurisdiction. Contrast the principal authority relied on by respondents, *Capital Service, Inc. v. NLRB*, 347 U.S. 501, 504-05 (1954) (Br. Op., pp. 14-17). The Court in *Jacksonville Terminal* made it plain that in a suit by parties subject to the Railway Labor Act to enjoin secondary picketing under state law, the state courts had the power to apply state law, and that the only question was the extent to which this application was limited by "paramount Federal policies of nationwide import." 394 U.S., at 382.

Even if the Federal District Court had by its April 26, 1967, order declared the absence of any rights of ACL against respondents under Federal law, respondents never demonstrated why an injunction against the assertion of the ACL's state-created rights in state court would be necessary either in aid of the District Court's jurisdiction or to protect or effectuate the District Court's April 26, 1967, order. The proceedings in Federal court in 1967 were simply an effort by ACL to assert Federal law rights against BLE and the other respondents; the respondents filed no counterclaim and sought no declaration of whether they had a Federal-law defense against any proceedings that might later be filed in state court. No question of the defenses available to respondents against any suit which might be filed under state law ever entered into the April 26, 1967, order of the District Court. The existence of state law remedies is thus a matter separate and apart from the question of the Federal-law rights and remedies of ACL said to have been adjudicated by the District Court in its April 26, 1967, order. Whatever that order did, it did not purport to pass on the availability of state-law remedies or

rights to the ACL, or the validity of any defense that might be interposed by the respondents thereto.

The normal method of review of the state court's June 3, 1969, action in finding a distinction between the picketing involved in the Jacksonville Terminal situation and that involved in the Moncrief Yard situation would have been for respondents to prosecute an appeal in the state courts, with review on certiorari available in this Court, as it was in *Jacksonville Terminal*.⁷ Despite the plenary availability of appellate remedies in the Florida state courts—at the request of respondents, the Florida state court judge agreed to make the state court injunction permanent, so as to remove any question as to appealability (Pet. App. C, p. 15a)—the respondents, in the three and one-half months since the action of the state court, have not lifted a finger to have that decision reviewed in the normal course of state appellate practice.

As we shall once again recall in point 3, pp. 8-10 below, there are substantial grounds for distinguishing the situation at the Moncrief Yard from the situation at the Jacksonville Terminal properties. These distinctions indicate a difference in legal result as to whether state law remedies should be permitted to apply. Our basic position, however,

⁷ Apparently in an effort to sugar the pill of the District Court's violation of Section 2283, the respondents find it necessary to characterize the state court judge as displaying "complete intransigence" and as willfully continuing his injunction "in the face of what even he termed the 'final conclusion' of this Court." See Br. Op., p. 10. A reference to the state court judge's letter opinion makes it plain that he is referring to the "final conclusion" of this Court as to the Jacksonville Terminal situation, Pet. App. C, p. 14, and that his opinion simply makes a conscientious distinction of the *Jacksonville Terminal* case on its facts from the situation prevailing at the Moncrief Yard—a factual distinction which the respondents' Brief in Opposition hardly contradicts. See point 3, pp. 8-10, below.

is that Section 2283 does not contemplate that those questions will be ventilated in a proceeding in Federal court to enjoin an action in the state courts. That is the basic teaching of the *Richman Brothers* case, *Amalgamated Clothing Workers of America v. Richman Brothers Co.*, 348 U.S. 511 (1955).⁸ The prosecution of state law remedies in the state court by the ACL did not affront the jurisdiction of the Federal District Court nor any order which it had entered, even assuming that the April 26, 1967, order was a declaration of the parties' rights under Federal law. Clearly that order did not purport to pass on the availability of state law rights or remedies to the ACL, or the availability to the respondents of any Federal-law defense against ACL's state law remedies. Thus, the injunction here is not, in any view, "necessary in aid of its [the District Court's] jurisdiction, or to protect or effectuate its judgments."

All that the June, 1969, injunction proceedings in the District Court amounted to was a trial of a Federal-law defense to the ACL's state law suit in state court. Indeed, respondents themselves admit (Br. Op., p. 13) that prior to this Court's decision in the *Jacksonville Terminal* case there would have been no basis for the District Court's injunction against the state court proceedings. Respondents took no action for two years after the District Court's order of April 26, 1967, was entered to have the District Court enjoin proceedings in the state court, even though the ACL started those proceedings the very next day. It was only after this

⁸ For the reasons stated in the petition (Pet., p. 26, n. 17) the argument made commencing at Br. Op., p. 14, to the effect that *Richman Brothers* only held that a District Court may not enjoin proceedings in a state court where the Federal court has no jurisdiction itself, is completely erroneous. The respondents never explain why Section 2283 was necessary if all it does is to prevent a Federal District Court from enjoining state court proceedings simply in cases where the District Court does not have any subject matter jurisdiction itself.

Court's decision in *Jacksonville Terminal* that the District Court was asked to enjoin the proceedings in the state court. The question of the existence of a Federal-law defense to the state court proceedings was litigated in the Federal court for the first time in June, 1969. It is perfectly clear that what the District Court was actually called upon to do by the respondents in their June, 1969, motion for an injunction was not to aid its jurisdiction or to protect or effectuate its April 26, 1967, order, but belatedly to try the validity of an asserted Federal-law defense to those state court proceedings. It is precisely the trial of such a Federal-law defense, even if it had been well founded, that the *Richman Brothers* case teaches may not be undertaken through an injunction proceeding in Federal court.*

3. Finally, even if it were somehow appropriate to try a Federal-law defense to a state court suit through injunction proceedings in a Federal District Court such as those commenced by the respondents, the fact of the matter is that the only authority cited by respondents for the prop-

* Respondents rely (Br. Op., pp. 18-19) upon *United Industrial Workers v. Board of Trustees of Galveston Wharves*, 400 F.2d 320 (5th Cir. 1968), cert. denied, 395 U.S. 905 (1969). We distinguish that decision at pages 25-26 of the petition for certiorari. In an effort to press the application of that decision to the case at bar—despite the fact that its author, the Court of Appeals for the Fifth Circuit, did not rely on it here—the respondents cite the fact that in the so-called *Clerks* case, *Brotherhood of Railway & Steamship Clerks v. Florida East Coast R. Co.*, 384 U.S. 238 (1966), to which ACL was not a party, the Federal courts have entered orders requiring the FEC to bargain in good faith with its employees. (Br. Op., pp. 18-19)

Neither of the courts below relied upon the *Clerks* case, and for obvious reasons. That decision did not purport to delimit the extent under Federal law, let alone under state law, to which unions could use secondary pressures against carriers who were not a party to the labor dispute. It is hard to see how preventing the BLE from shutting down ACL's classification yard could be said to interfere with the performance by the FEC of its duties to bargain in good faith.

osition that state-created remedies are not available to the ACL against the secondary picketing involved here is the *Jacksonville Terminal* case, *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969). In the petition for certiorari we extensively developed the factual differences between the Jacksonville Terminal property, jointly owned by one of the disputants and the other carriers, and the Moncrief Yard facility, wholly-owned by the ACL. See Pet., pp. 6-10. We analyzed the decision in the *Jacksonville Terminal* case to demonstrate that these extensive factual differences amount to a legal distinction. See Pet., pp. 28-32.

The respondents have made no serious effort to controvert the factual distinctions we have urged. Instead, they seize upon a short passage in the plurality four-to-three opinion in the *Jacksonville Terminal* case, 394 U.S., at 392-93, and cite it as a *carte blanche* for railroad unions to escalate railway labor disputes by engaging in any and all secondary activities against third parties, free of any restraint imposed by the state courts under state law. See Br. Op., p. 9. For the reasons stated at length in the petition, these expressions must be read in the context of the common situs operation which the jointly-owned Jacksonville Terminal property was found to constitute. We need not detail again the extensive factors of common operation and use involving the FEC which the Court found to exist with respect to the Jacksonville Terminal properties.

Here, it is undisputed that the primary function of the Moncrief Yard—which is wholly-owned by the ACL and in whose operations the FEC has no say whatsoever—is to serve as a classification yard for the ACL. To be sure, the ACL and the FEC do perform interchange at the yard, but the function of the FEC is simply to deliver

cars to the ACL there and to pick up cars from the ACL which are destined to it. This pick-up and delivery function is entirely different from that which was found to prevail at the Jacksonville Terminal facilities. It may be so that a substantial amount of the cars which the FEC ultimately handles are picked up by it at Moncrief Yard (see Br. Op., p. 6), but this hardly makes the primary function of the Moncrief Yard the performance of interchange with the FEC.¹⁰ See the statistics we cite at page 7 of the petition. Yet on the basis of this incidental use of the Moncrief Yard for FEC-ACL interchange, the respondents claim the right without interference from any tribunal to engage in picketing activities which indisputably will shut down the operation of the entire Moncrief Yard.

Accordingly, even if somehow it was appropriate for the District Court to consider the matter, the picketing involved here is not protected by Federal law. Therefore, even if we assume that enjoining state-law based proceedings in a state court against picketing which is protected by Federal law were somehow an action necessary in aid of a District Court's jurisdiction or necessary to protect or effectuate its judgments, the District Court's action here would still be violative of Section 2283.

B. The Norris-LaGuardia Act

The respondents' arguments as to the nonapplicability of the Norris-LaGuardia Act (Br. Op., pp. 19-22) simply

¹⁰ The respondents make much (Br. Op., p. 6) of the fact that FEC crews daily "operated over two-thirds of the length of the Moncrief Yard." All this means is that the FEC crews had to go two-thirds of the way down the yard to pick up and deliver their cars. (McRae Tr. 102) Only one track out of the many tracks at this major classification yard was assigned for this purpose. The facts are clear that ACL-FEC interchange was not a primary function of the Moncrief Yard. (See Pet., p. 7)

underscore the serious nature of the contentions made in the petition under that Act.

1. Respondents begin by misstating the effect of Sections 4 and 7 of the Norris-LaGuardia Act. It is said that Section 7 only applies to acts protected by Section 4 (Br. Op., p. 20). But Section 7's prohibitions are not limited by Section 4; on their faces, each of the sections is an independent prohibition. Section 7 applies to "any case involving or growing out of a labor dispute," as this case was held to be. Yet there was no semblance of compliance with the requisite Section 7 procedures and findings here by the District Court. For this reason alone, the District Court's order violated Section 7 of the Act.

2. Moreover, Section 4(d) of the Act was violated by the District Court's injunction. It is fatuous to argue, as the respondents do (Br. Op., p. 20), that Section 4(d) prohibits an injunction against persons aiding the ACL in its attempts to obtain a state court remedy, but does not prevent an injunction against the prosecution of that state court remedy. Moreover, on its face the injunction prohibits not only the enforcement of state court remedies but collective and concerted action in enforcement of them. (See Pet. App. D, p. 18a)

3. The primary thrust of the respondents on this point is that the Norris-LaGuardia Act does not apply with respect to injunctions against management at all. (Br. Op., pp. 20-21) As we pointed out in our petition (Pet., p. 34) this Court has never enunciated any such proposition, and the necessary assertion of so broad a proposition in support of the District Court's order itself suggests the appropriateness of this Court's review.

CONCLUSION

As Mr. Justice Black pointed out in granting the stay application, the issues presented under Section 2283 of the Judicial Code by the District Court's action are "highly complex and difficult." (See Pet. App. F, p. 22a). As he also observed (*id.*, at 23a), the questions are of widespread importance. Moreover, the issues we present as to the Norris-LaGuardia Act also merit this Court's review.

Accordingly, for the reasons stated in the petition for certiorari and herein, the petition for certiorari should be granted.

Respectfully submitted,

DENNIS G. LYONS

1229 Nineteenth Street, N. W.
Washington, D. C. 20036

FRANK X. FRIEDMANN, JR.

DAVID M. FOSTER

1300 Florida Title Building
Jacksonville, Florida 32202

Attorneys for Petitioner

Of Counsel:

JOHN W. WELDON

JOHN B. CHANDLER, JR.

ROGERS, TOWERS, BAILEY, JONES & GAY

JOHN S. COX

COX & WEBB

Jacksonville, Florida

ARNOLD & PORTER

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TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**BRIEF OF RESPONDENTS
IN OPPOSITION**

**ALLAN MILLEDGE
RICHARD L. HORN
1300 Northeast Airlines Bldg.
150 S. E. Second Avenue
Miami, Florida 33131
Attorneys for Respondents**

Of Counsel:
**ROSS, KRAUSHAAR & BENNETT
Cleveland, Ohio**

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Section 7 (29 U.S.C. §107). _____ 19, 20, 23

Railway Labor Act (45 U.S.C. §151 et seq.) _____ 5, 17

OTHER AUTHORITIES

Moore's Federal Practice, Vol. 1A, pp. 2320, 2323. _____ 14

75 Cong. Rec. 5492 (1932) _____ 20

in the
Supreme Court
of the
United States

October Term, 1969

CASE No. 477

ATLANTIC COAST LINE RAILROAD COMPANY,

Petitioner,

vs.

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS:
LOCAL LODGE DIVISION 823 of the BROTHER-
HOOD OF LOCOMOTIVE ENGINEERS; J. E.
EASON, individually and as an official of said
Brotherhood; J. D. SIMS, individually and as an
official of said Brotherhood; H. M. SAWYER, indi-
vidually and as a member of said Brotherhood; W. K.
MORRIS, individually and as a member of said
Brotherhood; and G. W. RUTLAND, individually
and as a member of said Brotherhood,**

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**BRIEF OF RESPONDENTS
IN OPPOSITION**

QUESTIONS PRESENTED

1. Where a Federal District Court possessed of subject matter jurisdiction over a controversy has entered an order containing a preliminary delineation of the rights of the parties under controlling federal law, may the Court "in aid of its jurisdiction" and "to protect or effectuate its judgment", within the meaning of 28 U.S.C. §2283, enjoin the enforcement of a subsequent state court injunction against the identical conduct based upon inapplicable state law, which state injunction would nullify the District Court's prior findings and order?

2. Under the circumstances presented in Question 1, does the Norris-LaGuardia Act operate to prohibit the District Court from enjoining state proceedings "in aid of its jurisdiction" and "to protect or effectuate its judgment"?

STATEMENT

It is safe to assert that this Court has devoted more time and attention over the past several terms to the problems arising from the Florida East Coast (FEC) Railway's succession of labor disputes, than to any other single class of labor problems. The initial decision of this Court in *Brhd. of Ry. and S.S. Clerks v. Florida E.C. Ry. Co.*, 384 U.S. 238 (1966) recounts the early history of the FEC dispute which began as a strike by the FEC's non-operating employees in January, 1963. Since the earliest days of the dispute, when FEC resumed its operations¹ using striker

¹Such operations were, of course, in violation of the Railway Labor Act until the FEC was enjoined prospectively almost two years later, *Id.*

replacement crews, the striking employees have sought to bring their economic power to bear on the points where FEC receives and delivers freight with its connecting carriers, the points of interchange.

These efforts of the striking unions to picket the points of interchange, where FEC trains daily operate to receive and deliver the freight traffic which enables it to operate unimpeded in the face of continuing lawful strikes, have spawned prolific litigation. The FEC operates primarily in a straight north-south line along the east coast of the State of Florida. At the FEC's southern terminus where it interchanges freight with the Broward County Port Authority,² and at its northern terminus in Jacksonville where FEC interchanges freight on the premises of the Jacksonville Terminal Company with the Seaboard Air Line Railroad (SAL), and Southern Railway, and on the premises of the Moncrief Yard where FEC interchange is performed with the Petitioner, Atlantic Coast Line Railroad Co. (ACL), picketing at each interchange point has involved its own lengthy injunctive proceeding.

Picketing of the interchange carried out on the premises of the Jacksonville Terminal Company was, of course, three times before this Court.³

The decision of this Court late in the last term, *Brotherhood of R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 89 S.Ct. 1109 (1969), in which certiorari was granted "to determine the extent of state power to

²See, *Brotherhood of Locomotive Firemen & Enginemen v. Florida East Coast R. Co.*, 346 F. 2d 673 (CA 5 1965).

³*Atlantic C.L.R. Co. v. Brhd. of Railroad Trainmen*, 385 U.S. 20, (1966) *aff'g* 362 F. 2d 649 (CA 5 1966); *Brhd. of Railroad Trainmen v. Jacksonville Terminal Co.*, certiorari denied, 385 U.S. 935 (1966); *Brhd. of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969).

regulate the economic combat of parties subject to the Railway Labor Act," 89 S.Ct. at 1112, should, we submit, have written an end to the Florida state courts granting of injunctions based upon Florida state law against picketing by parties whose disputes have run the gamut of the Railway Labor Act's procedures. By reason of the intransigence of the Florida state courts, however, this was not to be.

In this case a Federal District Court, having entered an Order on April 26, 1967 (Appendix A to Petition) preliminarily finding that the picketing by the respondent union of ACL's Moncrief Yard is lawful and protected under Federal law, has found it necessary to enjoin the enforcement of a subsequent state court injunction, which prohibits the picketing under Florida state law, in order to protect and effectuate the Federal court's order and in aid of the Federal court's jurisdiction.

Background

In May, 1966, the picketing out of which the *Jacksonville Terminal* cases arose transpired at the premises of the Jacksonville Terminal Company. As noted in the opinion of this Court, the unions there involved, upon the FEC instituting its unilateral revision of rules, rates of pay and working conditions applicable to their crafts, "responded by calling a strike and thereafter by picketing the various locations at which FEC carried on its operations, including the premises of the respondent, Jacksonville Terminal Company." 89 S.Ct. at 1112. As further noted by the Court, "FEC carries on substantial daily operations at the terminal; interchanging freight cars with the other railroads; it accounts for approximately 30% of all interchanges on the premises." 89 S.Ct. at 1112.

While the *Jacksonville Terminal* litigation wound its slow way through the Florida appellate courts to this Court, on March 12, 1967 the last operating craft union which maintained "regular" contractual rights with the FEC, respondent Brotherhood of Locomotive Engineers (BLE), called a strike of its members against FEC in response to the FEC's identical unilateral revision of the rules, rates of pay and working conditions, this time applicable to locomotive engineers. This dispute had been fully processed through the procedures of the Railway Labor Act, and the FEC had declined binding arbitration, which BLE had accepted (McRae Tr. 129-133).

Following the commencement of the strike, on April 23, 1967 while the state court injunction ultimately reversed by this Court was still in effect prohibiting picketing of the Jacksonville Terminal Co., BLE began to picket the employee entrance to the Moncrief Yard where all FEC interchange with the ACL daily takes place.

The April 26, 1967 Order

This case was commenced by ACL on April 25, 1967, by the filing of a Complaint (Record 1-16) in the United States District Court for the Middle District of Florida, seeking an injunction and praying for general relief against the picketing activities of respondents at Moncrief Yard. The picketing was alleged to be in violation of the Railway Labor Act, 45 U.S.C. §151 et seq., and the Interstate Commerce Act, 49 U.S.C. §1 et seq. The jurisdiction of the Court was specifically invoked by the plaintiff ACL, under 28 U.S.C. §§ 1331 and 1337.

The plaintiff's Motion for a Preliminary Injunction was brought on for hearing on the same day, and a full evidentiary hearing was held by the Court including the testimony of five ACL officials and of the BLE officer in

charge of the picketing. The testimony of the ACL officials showed that FEC engines and crews daily operate across the tracks of the Jacksonville Terminal Company and onto the tracks of the Moncrief Yard where they deliver freight to and pick up freight from the ACL. (McRae Tr. 32). In the words of L. T. Andrews, ACL General Manager:

"The use of the Moncrief Yard tracks for interchange purposes, on the basis of the present day operations, is a part of the FEC operation."

* * *

"Q. And if they did not use it everyday they wouldn't get any freight from ACL?

A. Not under the basis of the present operating conditions." (McRae Tr. 103)

FEC engines and crews were shown to daily operate over two-thirds of the length of the Moncrief Yard (McRae Tr. 102). All FEC interchange in the Jacksonville area was shown to take place with the SAL and Southern on the premises of the Jacksonville Terminal Co., but with the ACL entirely within the premises of the Moncrief Yard (McRae Tr. 100). Use of the Moncrief Yard interchange facility by FEC was shown to account for 60% of all freight received by FEC from the North (McRae Tr. 137). On the basis of the evidence presented, the District Court on the following day, April 26, 1967 entered its Order denying the application of the ACL for temporary injunctive relief. (Appendix A to Petition, pp. 1a-5a)

Although ACL repeatedly in its Petition (pp. 10, 21, 22, 23, 24, 25, 26, 27) characterizes this Order as simply involving a finding by the District Court that it was precluded by the Norris-LaGuardia Act, 29 U.S.C. §101 et seq.,

from granting injunctive relief, examination of the five-page Order demonstrates that it was, in fact, as the District Judge himself later characterized it, a preliminary "delineation of rights of the parties" (Exhibit D to Petition; Order June 19, 1969, p. 18a) under controlling federal law, *including Section 20 of the Clayton Act*, 29 U.S.C. §52 (Appendix A to Petition, Conclusions of Law, paragraph 7, p. 4a).

In this Order the District Court held that it had jurisdiction of the case under 28 U.S.C. §1337. (*Id.*, Conclusion of Law, paragraph 1 p. 3a).

The Court further specifically dealt with the ACL's contention that the respondents' picketing was in violation of the Railway Labor Act (*Id.*, Conclusions of Law, paragraphs 4 and 5, p. 4a) and rejected that contention.

Finally the Court held that in addition to the Norris-LaGuardia Act, *Section 20 of the Clayton Act*, 29 U.S.C. §52, was applicable to the conduct of the respondents. (*Id.*, Conclusions of Law No. 7, p. 4a) This section of the Clayton Act provides that the conduct specified within its terms, which includes " * * * ceasing to perform any work or labor, or * * * recommending, advising, or persuading others by peaceful means so to do," and "peacefully persuading any person to work or abstain from working," shall not " * * * be considered or held to be violations of any law of the United States." 29 U.S.C. §52. *United States v. Hutcheson*, 312 U.S. 219 (1941).

In light of this finding, there can be no question that the District Court, as it later expressly stated, (Order, June 19, 1969, Appendix D to Petition, p. 18a) delineated the rights of the parties to the case which was properly before the Court. No appeal was taken from this Order

by ACL, and ACL does not challenge in this Court, as it cannot, the District Court's findings of fact and conclusions of law in the April 26, 1967 Order. We can only urge the Court to examine this Order for itself to determine whether its characterization by the ACL or by the District Judge who entered it, is correct.

The State Court Injunction — Immediately following the entry of the April 26, 1967 Order by the Federal District Court, the ACL filed another Complaint in the Circuit Court for the Fourth Judicial Circuit in and for Duval County, Florida, against respondents, seeking an injunction based upon state law against respondents' identical picketing activities.

The hearing before the state court was essentially identical with the previous hearing before the Federal Court.* The opposite result however was reached by the state court judge, who entered an Order for Temporary Injunction on May 3, 1967 enjoining respondents' conduct based upon the application of Florida state law. (Appendix B to Petition).

By agreement between counsel, no action was taken in the state court case while the companion litigation involving the Brotherhood of Railroad Trainmen's May, 1966 picketing of the Jacksonville Terminal Company made its way to this Court for determination of the scope of railway labor's self-help rights and the law (state, federal or both) applicable thereto.

The opinion of this Court in the companion litigation, *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969) was issued on March

*Compare Transcript of Hearing, April 25, 1967, (McRae Tr.) with the Transcript of Hearing, May 1, 1967 (Luckie Tr.).

25, 1969 and rehearing was denied by the Court on May 5, 1969. While, to be sure, this case was decided by a narrowly divided Court, it may not, under our judicial system, be supposed that such a decision has less efficacy than do those decided by a unanimous court. With this decision having so recently been rendered by the Court, we would not presume to undertake a detailed explication.

We submit, however, as we have since Mr. Justice Harlan's opinion for the Court was rendered, that the holding of the Court is to be found in the concluding portion of the opinion, designated Roman-numeral VIII, 89 S.Ct. at 1122-24. And specifically that the controlling federal law under the Railway Labor Act:

"* * * is to allow parties who have unsuccessfully exhausted the Railway Labor Act's procedures for resolution of a major dispute to employ the full range of whatever peaceful economic power they can muster, so long as its use conflicts with no other obligation imposed by federal law. Hence, until Congress acts, picketing — whether characterized as primary or secondary — must be deemed conduct protected against state proscription. * * * Any other solution — apart from the rejected one of holding that *no* conduct is protected — would involve the courts once again in a venture for which they are institutionally unsuited." 89 S.Ct. at 1123-24.

Following the denial of rehearing by this Court in the *Jacksonville Terminal* case, respondents moved in the state court for the dissolution of the state court injunction, which was bottomed solely upon the application of Florida state law to respondents' picketing. The state court judge, however, decided to ignore the holding of this Court in the

Jacksonville Terminal case, and in a remarkable letter opinion (Appendix C to the Petition) announced his decision to continue the state court injunction based upon Florida state law in the face of what even he termed the "final conclusion" of this Court. (*Id.*, p. 14a).

Presented with this display of complete intransigence on the part of the state court, respondents then filed a Motion for Preliminary Injunction in the pending Federal District Court action against the Petitioner's enforcement of the state court injunction, which clearly flouted and nullified the previously entered Order of the District Court of April 26, 1967, and impinged upon and violated the jurisdiction of the District Court to finally determine the rights of the parties to the case then pending before it, under controlling federal law.

On June 19, 1969 the District Court entered the Order which is the subject of the Petition, enjoining the ACL from giving effect to the state court injunction. (Appendix D to the Petition). In this Order the District Court specifically held⁵:

"In its Order of April 26, 1967, this Court found that Plaintiff's Moncrief Yard, the area in question, is an integral and necessary part of [Florida East Coast Railway Company's] operations. Finding of Fact No. 5. The Court concluded furthermore that Defendants herein are now free to engage in self-help. Conclusion of Law No. 3.

⁵Compare the first sentence quoted from the District Court Order with the tortured distinction attempted to be made in the Petition, p. 30, fn. 14 as to the difference between a finding that Moncrief Yard is an integral part of FEC's operations, and "the use" of Moncrief Yard as such integral part.

The injunction of the state court, if allowed to continue in force, would effectively nullify this Court's findings and delineation of rights of the parties. The categorization of Defendants' activities as secondary does not alter this state of affairs. See *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, ____ U.S. ____, 22 L.Ed.2d 344 (1969). The prohibition of 28 U.S.C. §2283, therefore, does not deprive this Court of jurisdiction to enter the injunction in this instance. *Capital Service, Inc. v. NLRB*, 347 U.S. 501 (1954); *Brotherhood of Ry. Trainmen v. Board of Trustees of Galveston Wharves*, 400 F.2d 320 (5th Cir. 1968)." Appendix D to Petition, pp. 17a-18a.

Following the entry of the District Court's Order of June 19, 1969, the petitioner sought a stay pending appeal from the District Court, from a single judge of the Court of Appeals, and from a three judge panel of the Court of Appeals. All were unanimous in denying the requested stay. The Court of Appeals panel also denied an application for stay pending certiorari.

On July 15, 1969, petitioner presented an application for stay to Mr. Justice Black, who granted a stay of enforcement of the District Court's Order pending the petition for certiorari, and, if granted, pending the Court's judgment, on July 16, 1969. (Appendices F and G to Petition). Meanwhile the Court of Appeals on July 17, 1969 entered its judgment of affirmance of the District Court's Order, based upon a stipulation of the parties which had been filed on July 16, 1969. (Appendix H to Petition, p. 25a).

ARGUMENT

It should be noted again and emphasized at the outset of the argument that a fundamental premise of the petitioner's argument is false. This is their repeated assertion that the 1967 Order of the District Court was based solely upon the Norris-LaGuardia Act and did not contain any further substantive delineation of the rights of the parties under controlling Federal law. As we have noted above, this Order which preceded this Court's *Jacksonville Terminal* decision by two years, contained a finding that Section 20 of the Clayton Act, 29 U.S.C. §52, was applicable to the facts before the Court, and this statute provides that all such conduct, specified within its terms, shall not " * * be considered or held to be violations of any law of the United States." See, *United States v. Hutcherson*, 312 U.S. 219 (1941).

This finding of the District Court in its 1967 Order is *not* subject to review by this Court in this case. Petitioner sought no review of that order, the time for appeal has long since passed, and petitioner has admitted that it may not now challenge the contents of the 1967 order.⁶

Moreover, the District Court itself, contrary to petitioner's assertion that "The District Court in 1967 * * * could not and did not purport to define the ultimate Federal legal rights of the parties," (Petition, p. 25) held that the 1967 order was indeed a "delineation of rights of the parties." (Appendix D to Petition, p. 18a). Having

⁶See, Petitioner's Application for an Order Staying Enforcement of the Injunction Order, Dated June 19, 1969, presented to Mr. Justice Black, p. 9.

invoked the jurisdiction of the Federal District Court to determine the legality of respondents' picketing, and the Court having found such conduct legal under controlling federal law and having preliminarily delineated the rights of the parties under federal law, petitioner is bound by such determinations. Although prior to this Court's decision in *Jacksonville Terminal* the application of state law as well as federal law to such conduct was arguable, there is now no room for state proscription, and the delineation of rights under federal law must control. The District Court's Order of June 19, 1969 was clearly proper in aid of the Court's jurisdiction to finally determine the rights of the parties, and to protect and effectuate its preliminary determination of rights in the April 26, 1967 Order. The Court's action falls clearly within the express exceptions provided in 28 U.S.C. §2283, and is in complete harmony with the decisions of this Court.

A. *The Order of June 19, 1969, is Specifically Authorized Under 28 U.S.C. §2283 and is in Harmony with this Court's Decisions.*

Petitioner's primary argument is that the decision of the Court below is in conflict with *Amalgamated Clothing Workers of America v. Richman Brothers*, 348 U.S. 511 (1955). Their argument in this regard is an amalgam of oversimplification and distortion. *Richman Brothers* is said by Petitioner to teach " * * * that the Federal district courts do not sit as appellate courts over the state tribunals in cases where preemption of state court remedies in labor and related matters are concerned." (Petition, p. 18.) Obviously the Federal district courts do not sit as appel-

late courts, however, it is a quite different matter where a Federal District Court having exercised its subject-matter jurisdiction over a controversy and having entered an order delineating the rights of the parties to the controversy under controlling federal law, must act to protect its jurisdiction and its order. The District Court below rejected petitioner's argument based upon *Richman Brothers* and held that the present case was governed by this Court's decision in *Capital Service, Inc. v. NLRB*, 347 U.S. 501 (1954).

Both *Richman Brothers* and *Capital Service* turn on the specific exception to §2283 which permits the District Court to issue injunctions "where necessary in aid of its jurisdiction." In neither case had a previous order been entered by the Federal district court, so no consideration was given to the specific statutory exception for enjoining state proceedings "to protect or effectuate its judgments," which we discuss below at pages 17 through 19.

The simple yet vital distinction between *Richman Brothers* and *Capital Service*, uniformly recognized by the courts (E.g., *United Industrial Workers v. Board of Trustees of Galveston Wharves*, 400 F. 2d 320, 332 cert. denied, 395 U.S. 905 (1969)), and commentators (E.g., 1A Moore's Federal Practice, pp. 2320, 2323) is that in *Richman Brothers* the district court had no subject matter jurisdiction over the controversy, such jurisdiction being preempted by the exclusive jurisdiction of the National Labor Relations Board, while in *Capital Service* the district court had such subject matter jurisdiction, and could enjoin the state court proceedings in aid thereof.

In *Capital Service* the Court held:

"The state court injunction restrains conduct which the District Court was asked to enjoin in the §10(1) proceeding brought in the District Court by the Board's Regional Director against the union. * * * If the state court decree were to stand, the Federal District Court would be limited in the action it might take. If the Federal District Court were to have unfettered power to decide for or against the union, and to write such decree as it deemed necessary in order to effectuate the policies of the Act, it must be freed of all restraints from the other tribunal. To exercise its jurisdiction freely and fully it must first remove the state decree. When it did so, it acted 'where necessary in aid of its jurisdiction.'" 347 U.S. at 505-6.

In *Richman Brothers* however, it was not the Board but a private litigant who sought to invoke the jurisdiction of the district court. Here the court stated:

"Congress explicitly gave such jurisdiction to the district courts only on behalf of the Board on a petition by it or 'the officer or regional attorney to whom the matter may be referred'. §10(j)(1), 61 Stat. 149, 29 U.S.C. §160(j)(1). To hold that the Taft-Hartley Act also authorizes a private litigant to secure interim relief would be to ignore the closely circumscribed jurisdiction given to the District Court and to generalize where Congress has chosen to specify.

* * *

"3. The exception to §2283 which permits the District Court to issue injunctions 'where necessary in aid of its jurisdiction' remains to be considered. In no lawyer-like sense can the present proceeding be thought to be in aid of the District Court's jurisdiction. Under no circumstances has the District Court jurisdiction to enforce rights and duties which call for recognition by the Board. Such non-existent jurisdiction therefore cannot be aided.

Insofar as protection is needed for the Board's exercise of its jurisdiction, Congress has, as we have seen, specifically provided for resort, but only by the Board, to the District Court's equity powers. Since the very presupposition of this proceeding is that jurisdiction of the subject matter of which the employer complained was in the Board and not in the state court, any aid that is needed to protect jurisdiction is the aid which the Board may need for the safeguarding of its authority. Such aid only the Board could seek, and only if, in a case pending before it, it has satisfied itself as to the adequacy of the complaint." 348 U.S. at 517, 519-20.

All of the Court of Appeals cases which petitioner cites as following *Richman Brothers* and alleges are in conflict with the decision below⁷ are cases in which the Federal district courts possessed no jurisdiction of the subject-matter of the case, and therefore could issue no injunction in aid thereof.

⁷Petition, p. 20.

Under the scheme established by the Railway Labor Act, 45 U.S.C. §151 et seq., however, there is no agency comparable to the NLRB and it is the Federal district courts which are the primary arbiters of law in the exercise of their jurisdiction over actions arising under " * * * any Act of Congress regulating Commerce" 28 U.S.C. §1337: *International Ass'n of Machinists v. Central Airlines*, 372 U.S. 682 (1963). This Court has recently reaffirmed "the primacy of the federal judiciary in deciding questions of federal law," within their subject-matter jurisdiction, notwithstanding the limitations of the Norris-LaGuardia Act. *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557, 560 (1968).

Private litigants under the Railway Labor Act may freely invoke the jurisdiction of the Federal District Court, the petitioner did so in this case, and the Court assumed jurisdiction of the controversy. Once the Court has assumed such jurisdiction it clearly is entitled under the Railway Labor Act, as under Taft-Hartley, " * * * to have unfettered power to decide for or against the union," *Capital Service, Inc. v. NLRB*, 347 U.S. 501, 505. Merely because petitioner disagrees with the District Court's decision for the union does not deprive the Court of jurisdiction to decide the case or the power to enjoin the state court proceedings in aid thereof. The District Court's power to decide for the union, and its decision for the union, plainly were nullified by the state court injunction, and an injunction "in aid of its jurisdiction" was clearly proper.

The second basis relied upon by the District Court below in support of its June 19, 1969 order was the specific statutory exception which authorizes injunctions

against state proceedings by the Federal Courts "to protect or effectuate its judgments." 28 U.S.C. §2283. In this regard the District Court cited the recent opinion of the Court of Appeals, Fifth Circuit in *United Industrial Workers v. Board of Trustees of Galveston Wharves*, 400 F.2d 320 (5th Cir. 1968), *cert. denied* 395 U.S. 905 (1969).

In *Galveston Wharves* the Court of Appeals affirmed an injunction against the enforcement of a state court injunction based upon Texas state law which prohibited peaceful picketing by a union in a Railway Labor Act dispute. The specific order as to which the Court held injunctive relief was proper to protect and effectuate, was one merely imposing a general duty to bargain in accordance with the requirements of the Railway Labor Act, and not as in the present case a specific federal judgment concerning the identical conduct enjoined by the state court, and finding such conduct to be legal under controlling federal law. Thus in the present case it is even more imperative than in *Galveston Wharves* for injunctive relief to prevent what the District Court specifically found:

"The injunction of the State Court, if allowed to continue in force, would effectively nullify this Court's findings and delineation of rights of the parties." Appendix D to Petition, p. 18a.

Moreover, the District Court below, the Court of Appeals, Fifth Circuit, and this Court have all entered and affirmed Orders which require, *inter alia*, the Florida East Coast Railway to bargain in good faith with its unions. E.g. *United States v. Florida E.C. Ry. Co.*, Case No. 64-107-Civ-J (U.S.D.C. M.D. Fla. 1964); *aff'd*, 348 F.2d 682 (CA 5 1965); *aff'd sub nom*, *Brhd of Ry. & S.S.*

Clerks v. Florida E.C. Ry. Co., 384 U.S. 238 (1966)⁴ Just as in *Galveston Wharves* this duty to bargain is, in fact, rendered impotent by the issuance of state court injunctions which prevent the unions from the exercise of their full self-help rights as determined by this Court and the District Court. And the fact that the state court deems the picketing involved in this case "secondary" is of no consequence under the decision of this Court in *Jacksonville Terminal*.

In addition no difficulty is presented by the fact that the April 26, 1967 Order of the District Court is not a final judgment, in order for it to be entitled to protection and effectuation under the terms of 28 U.S.C. §2283. *Sperry Rand Corporation v. Rothlein*, 288 F.2d 245 (CA 2 1961) ; See, *Ex Parte Simon*, 208 U.S. 144 (1908).

B. The Order of June 19, 1969 Was Not Prohibited by the Norris-LaGuardia Act.

Petitioner's second argument is that the Norris-LaGuardia Act, 29 U.S.C. § 101 et seq., operates to prohibit the District Court from enjoining the enforcement of the state court injunction under the facts of this case. This argument simply and completely ignores both the specific language of the Act, and the manifest intent and spirit of the framers of this legislation. The right to unfettered enforcement by an employer of a state court injunction which invades the subject-matter jurisdiction properly assumed by a Federal District Court, and nullifies a previous District Court Order is nowhere to be found as conduct protected by the Norris-LaGuardia Act.

⁴This case remains pending in the District Court below upon issues of FEC contempt of the Preliminary Injunction, and of the issuance of a Permanent Injunction.

Section 4 of the Act enumerates a code of protected labor conduct, placed beyond the reach of injunctive relief except in accordance with the procedures and conditions specified in Section 7, in response to the specific abuses which Congress found had been practiced by the Courts.

ACL has for the first time in the Petition⁹ seized upon Section 4(d), 29 U.S.C. §104(d), as the prohibition of the Act which is allegedly applicable and is violated by the District Court's Order prohibiting the enforcement of the state court injunction. This provision is obviously inapplicable even giving the language a purely literal reading and even without reference to the purposes of the Act, for petitioner is not " * * * *aiding* any person participating or interested in any labor dispute", but is rather itself seeking the enforcement of the state court injunction.¹⁰

The Norris-LaGuardia Act was, of course, passed to put an end to the abusive practice of lending the injunctive powers of the courts to aid the "owners of property" and "employers of labor" 29 U.S.C. §102, in their disputes with their workers. The statement of the public policy of the United States, enacted in Section 2 of the Act, 29 U.S.C. §102, clearly sets forth this Congressional intention. As this Court has repeatedly held:

"The underlying aim of the Norris-LaGuardia Act was to restore the broad purpose which Con-

⁹See Reply Memorandum for Petitioner on Application for Stay, filed July 16, 1969, p.5.

¹⁰In the Congressional debates the injunctive abuses which this provision was drafted to meet were explained by Congressman Garber: "Has not the employee the right to accept the aid of his friends in a suit at law?" 75 Cong. Rec. 5492 (1932).

gress thought it had formulated in the Clayton Act but which was frustrated, so Congress believed by unduly restrictive judicial construction. * * * The Norris-LaGuardia Act reasserted the original purpose of the Clayton Act by infusing into it the immunized *trade union activities* as redefined by the later Act." *United States v. Hutcheson*, 312 U.S. 219, 236 (1941). (Emphasis added).

There are few pieces of legislation where the congressional hearings, committee reports, and the language in the legislation itself more clearly point to the necessity for giving an Act a construction that will protect the congressional policy the Act adopted. Section 2 of this Act specifies the public policy to be taken into consideration in interpreting the Act's language and in determining the jurisdiction and authority of federal courts; it is one of freedom of association, organization, representation and negotiation on the part of *workers*. *Order of Railroad Telegraphers v. Chicago & N.W.R. Co.*, 362 U.S. 330, 335-6 (1960). (Emphasis added).

The provisions of the Act have been squarely held to be inapplicable as applied to the actions of " * * * employers of labor" within Section 2. *Brotherhood of Locomotive Engineers v. Baltimore and Ohio Railroad Company*, 310 F.2d 513, 517-518 (CA 7 1962).

The District Court upon its finding that a stay of the state proceeding was required in aid of its subject matter jurisdiction and to protect and effectuate its earlier judgment was clearly entitled to accomplish this purpose,

which is in no way related to the language or purposes of the Norris-LaGuardia Act, by the issuance of the June 19, 1969 Order.

The District Court by the issuance of this Order was, in addition, enforcing respondents' self-help rights under the Railway Labor Act, as established by this Court's opinion in *Jacksonville Terminal*. As early as 1936, in *Virginian Ry. Co. v. System Federation No. 40*, 300 U.S. 515, this Court held that in order to avoid the destruction of rights created under the Railway Labor Act, the Norris-LaGuardia Act must be accommodated with the scheme established under the Railway Labor Act. See also, *Brotherhood of R. Trainmen v. Howard* 343 U.S. 768 (1952); *Brotherhood of R. Trainmen v. Chicago R. & I.R. Co.*, 353 U.S. 30 (1957).

CONCLUSION

Certiorari is unwarranted in this case. The decisions of the federal courts below are plainly correct. This Court has recently resolved the substantive issue involved in this case by its *Jacksonville Terminal* decision, and has recently denied certiorari in a case raising identical procedural questions, *United Industrial Workers v. Board of Trustees of Galveston Wharves, Id.*

The law applicable to the economic combat of the parties to a Railway Labor Act dispute is solely federal law. And where a federal court has taken subject matter jurisdiction over such a controversy and has entered an order delineating the rights of the parties, it is, we sub-

mit, totally proper for the federal court under 28 U.S.C. §2283 and the Norris-LaGuardia Act to enjoin the conflicting state proceeding.

In weighing the equities involved in granting the injunction below, the District Court properly considered the plight of the individual working men involved in the FEC dispute, many of whom have been on strike for as much as six and a half years. The slow process of obtaining a decision by this Court establishing the scope of their self-help rights was completed with the Court's decision in *Jacksonville Terminal*. The harm which is caused to them by the continuing delay in permitting them to exercise their rights need not be elaborated.

Respectfully submitted,

Allan Milledge
ALLAN MILLEDGE

Richard L. Horn
RICHARD L. HORN

1300 Northeast Airlines Bldg.
150 S. E. Second Avenue
Miami, Florida 33131

Attorneys for Respondents

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1969

No. 477

ATLANTIC COAST LINE RAILROAD COMPANY,

Petitioner,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood; and G. W. RUTLAND, individually and as a member of said Brotherhood,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONER

OPINIONS BELOW

The order of the Court of Appeals dated July 17, 1969 (A. 238), is unreported. The District Court's order dated June 19, 1969 (A. 194), embodies a discussion of the facts

and the court's conclusions of law; it has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on July 17, 1969. (A. 238) The petition for certiorari was filed on August 15, 1969, and granted November 10, 1969. The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether it was permissible for the District Court here to enjoin proceedings in a state court, notwithstanding the anti-injunction provisions of Section 2283 of the Judicial Code, either (a) on the theory that by enjoining the pursuit of state court remedies, the District Court was "protecting or effectuating" its earlier judgment denying the state court plaintiff a Federal court injunction by reason of the Norris-LaGuardia Act's ban against Federal court injunctions in cases arising out of labor disputes, or (b) on the theory that Section 2283 is subject to implicit exception in cases where state law is allegedly preempted?

2. In the event that the lower Federal courts here, despite the provisions of Section 2283, had the power to enjoin proceedings in a state court looking toward an injunction against picketing if that picketing could be said to be protected under the rationale of this Court's decision in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969), was the picketing presented here in fact so protected under that decision's rationale? And if so, should not that decision be reconsidered?

3. Whether the injunction granted by the District Court here against the state court proceedings was precluded by Section 4(d) of the Norris-LaGuardia Act, which prohibits the grant of injunctions against the support of litigation by "any person participating or interested in any labor dispute . . . in any court . . . of any State," or by Section 7 of that Act, which prohibits the grant of injunctions without the making of certain findings, not made here, in "any case involving or growing out of a labor dispute"?

STATUTES INVOLVED

This case primarily involves the application of the anti-injunction statute of the Judicial Code, 28 U.S.C. § 2283, which provides:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The case also involves the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C. §§ 101 *et seq.*, Sections 4, 7 and 13 of which are set forth as Appendix A to this brief, pp. 1a-5a, *infra*.

STATEMENT

This case is another in the series of cases before this Court related to the dispute between the Florida East Coast Railroad ("FEC") and the railway labor unions which have been on strike against it for close to seven years in some instances. Like two of the previous cases, it concerns the attempt of those unions to involve third parties in the dispute between the FEC and the unions. However,

the legal and factual issues involved in this case are very different from those in the two cases which have previously come before this Court concerning the attempt of those unions to involve third parties in their dispute with the FEC.¹

In the first place, unlike those two previous cases, this case does not involve picketing of the Jacksonville Terminal Company facilities—facilities which are jointly owned by the FEC and the nonstruck carriers. This case involves union picketing and inducement of a “hot car” program solely at the Moncrief Yard, wholly-owned by the Seaboard Coast Line Railroad Company, a nonstruck carrier.² Despite the fact that in the two cases which have come before the Court, injunctive relief against the unions’ picketing the jointly-owned Jacksonville Terminal facilities has been held unavailable, the unions have not sought to reinstitute

¹ Those cases are *Atlantic Coast Line R. Co. v. Brotherhood of Railroad Trainmen*, 385 U.S. 20 (1966), in which the Court affirmed by a four-to-four vote a judgment of the Court of Appeals for the Fifth Circuit, *Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co.*, 362 F.2d 649 (1966), which by a two-to-one vote had held the Jacksonville Terminal Company, and two of the carriers using it, to be barred from obtaining an injunction against the picketing of the Terminal Company by reason of the Norris-LaGuardia Act; and *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969), in which a state court injunction against picketing the Terminal properties, obtained by the Terminal Company, was reversed by this Court by a four-to-three vote.

Other cases involving the FEC dispute are cited in the *Jacksonville Terminal* opinion, 394 U.S., at 371.

² This suit was instituted prior to the merger of Seaboard Air Line Railroad Company and Atlantic Coast Line Railroad Company and has continued to be prosecuted and defended in the name of the latter, to which we will continue generally to make reference, abbreviating it as “ACL.” Because of this, some references to the premerger situation will be made in the present tense. Seaboard Coast Line Railroad Company, the successor by merger to ACL and present sole owner of Moncrief Yard, will sometimes be referred to herein as “SCL.”

picketing at that terminal. Instead, they now seek to picket and disrupt activities at a major classification yard wholly owned by one of the nonstruck carriers.

In the second place, this case does not primarily involve the question of the propriety of an injunction restraining secondary picketing, but directly involves the extraordinary action of a Federal District Court in enjoining proceedings in a state court in the face of the anti-injunction statute, Section 2283 of the Judicial Code, and of the Norris-LaGuardia Act.

Background.—In May, 1966, certain rail unions which had a dispute with the FEC threw a picket line around the premises of the Jacksonville Terminal Company in an effort to make the Terminal Company and the other railroads using its facilities stop doing business with the FEC. Suits for an injunction were filed successively in the Federal courts and the state courts; by two nonstruck carriers and the Terminal Company in the Federal court and by the Terminal Company in the state court. While the Federal Court injunction terminated in November, 1966, after this Court's four-to-four affirmance of the Fifth Circuit's judgment in *Atlantic Coast Line R. Co. v. Brotherhood of Railroad Trainmen*, 385 U.S. 20 (1966), the state court injunction remained in effect until this Court's decision in the spring of 1969 in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, which reversed it.

In 1967, while the state court injunction against picketing at the Jacksonville Terminal premises was in effect, the Brotherhood of Locomotive Engineers ("BLE") commenced picketing the Moncrief Yard, the major railroad yard of the ACL in Florida. The ACL and the Seaboard maintain extensive service to the central and western por-

tions of peninsular Florida on their own lines (now merged) and serve Miami via a line passing through Jacksonville. The FEC serves only the east coast of Florida, its line running solely between Jacksonville and Miami.

The Moncrief Yard.—Moncrief Yard is a major classification yard wholly owned by the Seaboard Coast Line Railroad Company, successor to the ACL. (A. 30, 49-50) Virtually all freight carried by ACL to and from peninsular Florida moves through the Yard. The principal ACL line through Jacksonville passes through the Moncrief Yard. (A. 51-52)

Moncrief Yard is located to the north of the Jacksonville Terminal premises. (A. 38) As was pointed out by this Court in its opinion in the *Jacksonville Terminal* case, the Jacksonville Terminal facilities were jointly owned and controlled; the FEC shared in their ownership and control. Switching services, signaling services, freight and passenger terminal services, and repair and maintenance services were furnished to the FEC by the Jacksonville Terminal Company. FEC employees reported for their daily work at the Jacksonville Terminal premises. 394 U.S., at 372-74, 389-90.

By contrast, Moncrief Yard is ACL's own. ACL does not provide FEC with switching, signal or terminal services at Moncrief (A. 46); ACL does not repair or maintain FEC cars or locomotives or provide any other miscellaneous services to FEC there (A. 47); and no FEC employees report to or depart from work at Moncrief Yard. (A. 46) While ACL and FEC each had a stock ownership in the Jacksonville Terminal Company, Moncrief Yard is in no sense a joint facility. It is wholly owned by the Seaboard Coast Line Railroad Company. There is no interlocking

stock ownership between ACL or SCL and FEC. The tracks and real property of FEC and the Moncrief Yard do not even adjoin or abut. (A. 39-40, 46; 47)

The primary function of Moncrief Yard is classification, that is, breaking down incoming trains and transferring the cars to the appropriate outgoing trains. The tracks which make up Moncrief Yard form one integrated operation. (A. 41) Moncrief Yard, at Jacksonville, is athwart the main line of ACL into peninsular Florida. (A. 51) Jacksonville is an essential link on SCL's rail system which unites the Middle Atlantic states with the Southeastern states, and, indeed, ACL's headquarters were, and SCL's headquarters are, in Jacksonville.

All ACL main line tracks into and out of Florida pass through Moncrief Yard. (A. 51-52) All of ACL's main line freight trains into or out of Florida are classified in the Yard. (A. 51, 55) Each day, nine road freight trains moving to and from the North and four or five road freight trains moving to and from the South are classified in Moncrief Yard. (A. 51) The vast majority of car movements within Moncrief Yard are from one ACL road train to another.* Because of the Yard's strategic function, the ACL cannot function without Moncrief Yard. (A. 51)

Besides being a major classification yard of the ACL, and an essential point in its own services to peninsular Florida, the Moncrief Yard is also a place in which interchange is effected between the FEC and the ACL. A track into Moncrief Yard is designated for the movement into the Yard by FEC of northbound traffic destined for ACL

* As an example, in December, 1966, 46,000 cars were handled through Moncrief Yard. Of these cars, 36,000 came into and went out of Moncrief Yard on ACL road trains. (A. 52)

and of southbound traffic delivered by ACL to FEC. Specified tracks within the Yard are designated for ACL-FEC interchange. (A. 34) FEC employees bring in northbound cars from the FEC lines, haul them across the intervening premises of the Jacksonville Terminal Company, place them on specified tracks in the Yard and then deliver the car documents to ACL. (A. 42-43, 47-48) It is significant to note that thereafter the car is "owned" by ACL, the movement is for the account of ACL, and ACL has the risk of loss or damage.* (A. 48) Likewise, southbound cars which are destined for the FEC are placed on certain designated tracks in the Yard by ACL employees, to be picked up by FEC employees and by them taken out of the Yard. (A. 48) Until the car documents are transferred by ACL to FEC, these cars are the "property" and under the control of ACL. (A. 47-48) Thus, the only work done by the ACL employees at Moncrief Yard on the cars which have originated on the FEC and been left in the Yard or which will be picked up by the FEC from the Yard is the ACL's own work.

* Rule 7, Car Service Rules of the Association of American Railroads, Circular No. OT-10-B (revised 4/1/68). The Official Railway Equipment Register, ICC No. 373 (October 1969), provides in pertinent part:

(A) Cars shall be considered as having been delivered to a connecting railroad when placed upon the track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by necessary data for forwarding and to insure delivery, and accepted by the car inspector of the receiving road.

Notwithstanding the foregoing paragraph, the receiving road shall be responsible for the cars, contents and per diem after receipt of the proper data for forwarding and to insure delivery.

INTERPRETATIONS

Question: After a car has been accepted by the inspector of the receiving road, is the delivering road relieved from responsibility for damage to car and contents?

Answer: Yes. (June 20, 1924).

The Picketing and the "Hot Car" Program.—The BLE commenced picketing Monierief Yard on Sunday, April 23, 1967. (A. 27) The picket signs were displayed most prominently at entrances to ACL employee parking areas. (A. 28, 92, 94; McRae Tr. 7, 11, 51-53)* ACL employees were the only ones to use the parking areas. The message of the signs,* of the handbills then distributed, of word of mouth advice given to employees arriving for work, and apparently of phone calls made during the night to some of the employees, was that ACL employees should report for work but should refuse to perform services related to ACL cars which were eventually destined to or had originated on the FEC. (A. 27, 29, 31; McRae Tr. 14, 15, 52, 53) The picketing was thus addressed solely to ACL employees. The times and places of the picketing bore no relevance to the presence of FEC employees in the yard—those employees would be present in the yard only when they came in by rail as part of switching movements to pick up or to deliver cuts of cars. (A. 32, 103, 107, 110) The picketing and advice were given the ACL employees either at home or when they came to work, regardless of the presence of FEC employees. (A. 32)

The ACL employees followed the request of the BLE. The reaction of the ACL employees is significant. After the picketing began, the ACL switch crews assigned to move cars to and from tracks designed for placement of cars for interchange with FEC moved their switch engines into posi-

* We refer to the unprinted portions of the transcript of hearing before Judge McRae in the District Court, April 25, 1967, as "McRae Tr." Unprinted portions of the transcript of hearing before Judge Luckie in the Florida Circuit Court, May 1, 1967, are referred to as "Luckie Tr."

* A typical sign said: "Unfair. ACL is helping the FEC scabs destroy our jobs. Do not handle FEC freight." (A. 92)

tion but then refused to perform their work in the normal course and stepped down from their engines. (A. 26-27, 28-29, 41, 43-44, 95-96, 97-98) Subsequently, as the ACL called other crew members to work, according to the procedures mandated by its labor contracts, the crew members would report directly to the offices of the supervisory personnel and state that they would not perform their ordinary services. (A. 30; McRae Tr. 20)

One ACL road crew refused to take a train out of Moncrief Yard north to Waycross, Georgia, even though at the time of refusal the train had already been made up and all of the component cars were under the total and legal control of the ACL, simply because the train contained certain cars which had originated on the FEC's line. (A. 101, 121-22)

Since cars destined for interchange onto the FEC's lines would be found at various places throughout virtually all incoming trains from the north, and since the employees would not handle these cars, the result was an almost immediate blockage of operations in Moncrief Yard. (A. 38, 49, 56, 119, 120) While the Yard is a major one, the number of tracks in it is finite and indeed the Yard is already too small for the extensive functions performed in it. (A. 38, 44-45) Of course incoming cars can only be put

⁷ Of course, the cars which were given this treatment by the employees were not simply cars which had "Florida East Coast" painted on them. As is well known, the railroads use one another's cars, and, particularly in the case of a smaller carrier like the FEC, the vast majority of the cars originating on its lines would be cars owned by another carrier. Rather, the cars so treated by the employees were, in the case of southbound movements, cars which had originated on the ACL or connecting carriers and which were destined for delivery to points on the FEC's lines, and, in the case of northbound movements, cars which originated on the FEC's lines and were destined for points on the ACL's lines or on the lines of ACL's connecting carriers to the north. (A. 28, 29, 31, 96)

on tracks. The natural result—blockage of the Yard when incoming cars are not moved—is obvious, and it occurred. (A. 38, 49) Moreover, not only did ACL employees fail to classify cars arriving on incoming southbound road trains, but since the employees would not touch FEC-originated cars which had been dropped off in the Yard for inclusion in the northbound road trains, there was likewise a blockage of the Yard from this cause, and a breakdown in operations in building up northbound trains. (A. 44-45, 48-50) The refusals to handle the cars were not restricted to those portions of the Yard where FEC interchange was effected. (A. 31, 34, 41, 43, 96, 97)

The picketing and "hot car" program disrupted a variety of major and important rail operations, not related to the FEC originated or destined cars. This was due to the physical blockage and disruption in the Yard and the fact that other cars could not be moved without touching the "hot cars." (A. 49, 98-99, 102, 120) Thus, the movement of thousands of rail cars destined to various points inside and outside Florida on the ACL's own lines was disrupted. Many of these movements involve Florida fruit and other perishables. (A. 51, 52) Interchange between ACL and the Seaboard Air Line Railroad Company was likewise disrupted. (A. 49, 50)—Despite the subsequent merger of these two companies, that disruption would occur today with respect to the physical interchange connection of cars which had been routed on the rail lines in question.—Also disrupted were interchange between ACL and the Southern Railway System, a major southeastern carrier whose principal Florida lines terminate on the south at Jacksonville, and the switching and delivery of cars by ACL to industrial sites in metropolitan Jacksonville. (A. 49, 50) None of these operations just mentioned has anything to do with the FEC.

The picketing was directed solely at ACL employees who were performing duties for their own employer in relationship to rail cars "owned" by their employer and under that employer's sole control. (McRae Tr. 96) The avowed purpose was to close down Moncrief Yard. (A. 31) Until enjoined, it had seriously blocked the Yard. (A. 38, 49, 56, 119, 120) And, due not only to numerous practical problems but also to serious safety hazards, the result of closing down the Yard could not be avoided by the railroad's use of supervisory personnel. (A. 49, 130; McRae Tr. 87-90)

The Federal Court Action.—The complaint in the present action was filed in the United States District Court for the Middle District of Florida by ACL against BLE on April 25, 1967. (A. 7-24) The only relief prayed for was an injunction against the picketing; damages were not sought. The ACL brought on a prayer for a temporary injunction that day, which the District Court the next day, April 26, 1967, denied on the basis of the 1966 ruling of the Fifth Circuit^{*}—affirmed by an equal division in this Court⁴—in the case involving the Jacksonville Terminal, to the effect that the Norris-LaGuardia

^{*} With one exception, each of the case authorities cited by the District Court in its conclusions of law itself turned on the Norris-LaGuardia Act. See *Brotherhood of Locomotive Firemen & Enginemen v. Florida East Coast R. Co.*, 346 F.2d 673, 675 (5th Cir. 1965); *Chicago & I.M.R. Co. v. Brotherhood of Railroad Trainmen*, 315 F.2d 771, 777-78 (7th Cir. 1963), vacated as moot, 375 U.S. 18 (1963) (dissenting opinion of Swygert, J., relied upon by the District Court); *Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co.*, 362 F.2d 649, 653-55 (5th Cir. 1966), *aff'd* by an equally divided court, 385 U.S. 20 (1966). The exception is *Brotherhood of Locomotive Engineers v. Baltimore & O. R. Co.*, 372 U.S. 284 (1963), a *per curiam* decision holding simply that where the primary parties to a railway labor dispute have exhausted the procedures of the Railway Labor Act, they are entitled to use self-help against each other. See pp. 38-39, *infra*.

Act prevented the issuance of an injunction by a Federal court.⁹ (A. 64-68) At the request of the attorneys for the ACL, the summonses with complaint attached which had been issued for service upon the defendants were then not served, and the Federal court case lay completely dormant for over two years. No answer or counterclaim was filed by the BLE during that period.

The State Court Action.—The next day after the denial of the Federal court injunction, April 27, 1967, the ACL filed an action in a state court, the Circuit Court for Duval County, Florida, against the picketing of Moncrief Yard based solely upon state law, namely, the Florida Transportation Act, the Florida Restraint of Trade Law, and the Florida Labor Relations Law. An extensive hearing ensued at which considerable evidence and testimony was received, and the state court entered a temporary injunction on May 3, 1967. (A. 144-51) The BLE made no efforts to have this order reviewed or set aside for two years. However, on three occasions—one immediately after the filing of the complaint, one after the entry of the temporary injunction, and one in May, 1969—the BLE removed the suit to Federal court; but on each occasion ACL's motion to remand was granted on the ground that the District Court did not have original jurisdiction of the action under Sections 1331 and 1337 of the Judicial Code, since the action was brought solely under Florida law.¹⁰

⁹ The district judge was the same district judge who had originally enjoined the picketing at the Jacksonville Terminal properties in 1966, only to be reversed by the Court of Appeals in the case mentioned solely on the basis of the Norris-LaGuardia Act.

¹⁰ The three removal cases, in each of which a motion to remand was granted, are all in the United States District Court for the Middle District of Florida, and are Case No. 67-338-Civ.-J, filed April 27, 1967, and remanded the same day; Case No. 67-418-

In April, 1969, the BLE made application to the Circuit Court for Duval County to dissolve the injunction granted on May 3, 1967, on the grounds that this Court's decision of March 25, 1969, in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, precluded the application of state law and the grant of a state court injunction against the picketing presented by the case. (A. 158-60) ACL opposed the application, urging before the Florida Circuit Court that this Court's decision was clearly distinguishable and inapplicable to this case of picketing of a facility solely owned by a carrier not a party to the primary FEC labor dispute, a facility where none of the extensive services recited in this Court's opinion in the *Jacksonville Terminal* case (394 U.S., at 372-74, 389-90) were furnished to the FEC.¹¹

Immediately after oral argument before the Florida Circuit Court on May 23, 1969, the BLE (a) made the third of its three unsuccessful attempts to remove the suit pending before the Florida Circuit Court to the Federal District Court, and (b) filed a handwritten answer in the Federal court proceeding which had been dormant for the two years after the denial of the ACL's application for a temporary injunction. (A. 163-67, 168-71)

The Florida Circuit Court in a letter opinion rendered on June 3, 1969, viewed the picketing at Moncrief Yard as factually and legally distinguishable from that at the Jacksonville Terminal and declined to dissolve the in-

Civ.-J, filed May 23, 1967, and remanded July 6, 1967; and Case No. 69-351-Civ.-J, filed May 23, 1969, and remanded May 28, 1969. See A. 69-74, 152-57, 168-75.

¹¹ See Transcript of Proceedings before Honorable Charles A. Luckie, May 29, 1969, pp. 34-46 (hereinafter "Luckie 1969 Tr."); A. 177-80.

junction it had issued on May 3, 1967. (A. 181-82) At the hearing in the Florida Circuit Court, the BLE had requested that the injunction be made permanent, if not dissolved by the court (which would remove any doubt as to its appealability under Florida law), and ACL did not object. (Luckie 1969 Tr. 55) The Florida Circuit Court's letter opinion indicated that the request of counsel for the BLE was granted and that counsel for the BLE could proceed to have a final judgment entered.¹²

The Federal Court Injunction Against the State Court Proceeding.—The BLE did not pursue any steps in the Florida courts to obtain a review of the state court injunction or of the Circuit Court's action in refusing to dissolve it, notwithstanding the full availability of appellate remedies in the Florida state courts. Instead, the BLE the next day filed in the dormant Federal court proceeding in which it was the defendant a motion for preliminary injunction against the ACL's availing itself of the state court injunction.¹³ (A. 183-86)

On June 19, 1969, the District Court denied a motion by the ACL to dismiss its complaint.¹⁴ Over the objections of ACL, based on the anti-injunction statute (Section 2283

¹² Through the time of the printing of this Brief in late December, 1969, counsel for BLE had not yet caused final judgment to be entered.

¹³ The injunction requested and granted was one "pending final hearing and determination of this action." The content of this term is hard to make out, since the BLE as defendant was not praying for any permanent relief in the matter and ACL at this point was seeking to effect a voluntary dismissal of its complaint, which voluntary dismissal it stated on the record before the District Court might be with prejudice. The BLE resisted the voluntary dismissal, with or without prejudice, of ACL's complaint.

¹⁴ It was held that the filing of the handwritten answer by BLE, after the case had lain dormant for two years, had taken away ACL's right to a voluntary dismissal. See A. 194.

of the Judicial Code) and the Norris-LaGuardia Act, the District Court granted the BLE's motion for an injunction against the state court proceedings. (A. 194-96)

On June 26, 1969, ACL took an appeal to the Court of Appeals for the Fifth Circuit under 28 U.S.C. § 1292(a) (1), and sought a stay of the District Court's order pending consideration by the Court of Appeals of the appeal from the order granting the preliminary injunction against the state court proceedings. (A. 210-23) After denial by a single judge (A. 224-25), the application for a stay pending appeal was renewed and submitted to a three-judge panel of the Court of Appeals, consisting of Circuit Judges Bell, Ainsworth and Godbold. On July 7, 1969, the panel denied the stay application, citing as authority this Court's decision in the *Jacksonville Terminal* case, which did not, of course, involve Section 2283 of the Judicial Code (having arisen on certiorari to the state courts) but simply involved the question whether the state courts could enjoin picketing by the railroad brotherhoods at the Jacksonville Terminal properties. However, the panel "in view of the importance of the case" granted a ten-day temporary stay through July 17, 1969, to permit the ACL to pursue other remedies. (A. 226-27)

In response to this suggestion by the Court of Appeals, ACL then filed a motion in which it waived its rights to further briefing and oral argument and consented to and requested the final disposition of the case on the merits on the basis of the record filed and the briefs already submitted, within the ten-day period provided for by the Court's order.¹⁵ (A. 228-29) The purpose of ACL's mo-

¹⁵ In connection with the stay application to the Court of Appeals, the parties had already filed briefs aggregating 45 pages which had extensively discussed the merits of the appeal.

tion was to consent, procedurally, to the entry of a judgment without further briefing in the Court of Appeals affirming the District Court so that ACL might petition this Court for certiorari and apply for a stay pending certiorari.

The Court of Appeals on July 11, 1969, at first refused without explanation to enter a judgment on the merits.¹⁸ (A. 232) ACL proceeded to make application to Mr. Justice Black on July 15, 1969, for a stay of the District Court's injunction pending review by this Court of the judgment finally to be entered by the Court of Appeals upon the appeal to it. Mr. Justice Black granted the stay application on July 16, 1969. His order imposed a duty on ACL "to expedite all actions necessary to present its petition for certiorari here."

Meanwhile, ACL had filed a petition for rehearing with the Court of Appeals with respect to the order of the Court of Appeals denying an expedited hearing and denying expedited determination of the appeal on its merits. (A. 233-36) On July 16, 1969, the Court of Appeals requested BLE to respond to this petition, and shortly thereafter the parties filed a stipulation with the Court of Appeals that that court might enter a judgment affirming the District Court's order, in the light of its indications as to its views of the substantive law expressed in its order denying the stay application. This stipulation was without prejudice to ACL's rights to further judicial review. (A. 237) On July 17, 1969, the Court of Appeals affirmed the judgment of the District Court, again citing only this Court's decision in the *Jacksonville Terminal* case. (A. 238-39) This Court granted certiorari on ACL's petition on November 10, 1969.

¹⁸ The court also then denied a requested stay pending certiorari. (A. 232)

SUMMARY OF ARGUMENT

I. The District Court's injunction here violated Section 2283 of the Judicial Code. A. That provision forbids the lower Federal courts to adjudicate Federal preemption defenses by way of injunctions against proceedings in the state courts. Section 2283, the anti-injunction statute, is the current version of a provision that has been on the books since 1793. Its purpose is to minimize collision between the Federal and state courts by confining Federal court review of state court proceedings to this Court's review of judgments rendered in the highest available court of a state. The anti-injunction statute was last revised in 1948, but nothing in the revision indicates any alteration in the statute's basic philosophy, and the subsequent decisions of this Court confirm that.

In *Amalgamated Clothing Workers v. Richman Brothers Co.*, 348 U.S. 511 (1955), this Court held that Section 2283 barred Federal court enforcement of a preemption defense by way of an injunction against a suit in a state court in a labor case, even though preemption there was clear as a matter of substance, and even though by reason of the Federal preemption the state court there was without jurisdiction. The Court in *Richman Brothers* made it plain that the strong congressional policy exemplified in Section 2283 precluded enjoining a state court proceeding even under those circumstances.

Richman Brothers is completely controlling here. The respondents are simply seeking to adjudicate a Federal preemption defense to the Florida state court litigation through an injunction proceeding in the Federal court. Indeed, this case is a stronger one for the application of the anti-injunction statute than *Richman Brothers* because

Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., 394 U.S. 369 (1969), the case relied upon by respondents for their substantive assertions as to preemption, unlike the decisions rendered in the context of the Labor-Management Relations Act, repeatedly held that the Florida courts "are not pre-empted of jurisdiction over this cause" which involves a railway labor controversy.

Despite the respondents' contentions, applicability of the *Richman Brothers* case does not turn on the question whether the Federal court had jurisdiction in the first place, nor does the applicability of Section 2283 depend on whether the state court proceedings commenced before or after the Federal court case.

B. This case is not within any of the statutory exceptions to the prohibitions of Section 2283. The respondents contend that the injunction here was justified by the exceptions in that section which permit the injunction of state court proceedings "where necessary in aid of its [the District Court's] jurisdiction, or to protect or effectuate its judgments." These exceptions were meant to deal with cases removed from the state courts, with cases involving a "res" over which only one court could take jurisdiction, and with the situation of an attempted relitigation of a suit which had been completely determined by a Federal court on the merits.

This case presents none of these situations. Neither are the statutory exceptions applicable in terms. The only ruling of the Federal court in the suit filed by ACL was that, by reason of the Norris-LaGuardia Act, ACL was not entitled to a preliminary injunction. That the District Court held that it was without power to grant an injunction to ACL by reason of the Norris-LaGuardia Act does not mean that it had to enjoin proceedings for a similar

injunction sought before the state courts in order to aid its jurisdiction or to protect or effectuate its judgment. After the District Court had declined to issue an injunction under Federal law, it did not affront its jurisdiction for a state court to exercise its jurisdiction; nor does any such exercise in any way interfere with any judgment of the District Court.

The respondents have contended that the District Court's order of April 26, 1967, constituted a full and complete determination of the legal rights of the parties with respect to the picketing at Moncrief Yard. This assertion does not change the result. In the first place, it clearly overstates the effect of that order. Examination of the order and of the authorities cited in it makes it plain that the real basis of the order was the Norris-LaGuardia Act's bar on Federal injunctive remedies. However, even if the District Court's order did constitute an adjudication of substantive rights, it would not change the matter.

First, an order granting or denying a preliminary injunction is not an adjudication on the merits. In the second place, the order did not adjudicate rights under state law. The complaint in the District Court filed by ACL was based solely on Federal law. The District Court could not and did not purport to adjudicate any of the rights and duties of the parties under state law. Thus, the case is not one of a relitigation of a claim as to which there can be but a single governing law.—To be sure, the BLE takes the position that Federal law precludes or preempts enforcement of state-created rights against the picketing here in the state courts, but that is simply to argue that the District Court was free to adjudicate a Federal preemption defense through injunctive proceedings. As demonstrated in part A, that is what the decisions of this Court teach may not be done.

C. Even if adjudication of a preemption defense by way of injunction against the state court proceedings were on some basis deemed to be within the competence of the District Court, the state court's distinction of the *Jacksonville Terminal* case was well taken and its action should not have been enjoined by the District Court.

We do not know whether respondents are simply suggesting that the state courts may be enjoined where preemption is clear and not "arguable," or whether they are contending for plenary review of the state court decision in the injunction proceedings in the Federal District Court. But on either basis, the action of the state courts here was proper. This case, involving the picketing at the Moncrief Yard, a facility wholly owned and operated by the ACL, a neutral carrier, does not involve any of the specific factors of common use and ownership, and of the performance of services for the struck employer, found to exist by this Court at the Jacksonville Terminal. The Yard performs no services for the FEC. Its primary purpose is the classification of ACL rail traffic. The only relationship the Yard has with the FEC is interchange through "pick-up and delivery." The picketing here was not restricted in time or place to the points of interchange nor to the times when interchange was being effected. Rather, it was aimed solely at ACL employees, designed to keep them from handling cars which had originated on or were destined for the FEC—a "hot car" type of picketing. We submit that an intelligible distinction, based on the area in which self-help weapons may be used, can and should thus be drawn between this case and that of the picketing at the Jacksonville Terminal.

D. However, if the Court reaches the question whether *Jacksonville Terminal* is applicable here, and concludes that it is, that decision should be reconsidered and over-

ruled. The decision was candidly conceded not to amount to a "really satisfactory judicial solution to the problem at hand." We submit it is among the least satisfactory of the possible solutions. It ousts the application of state law in circumstances lacking the conventional hallmarks of supersession of state law—a federal statute governing the specific subject matter, or a federal administrative regulatory regime whose functioning must be protected, or even the existence of a body of federal common law (the court in *Jacksonville Terminal* declined to create any).

Thus, unlike the situation under the Labor Management Relations Act, the availability of state remedies in this Railway Labor Act context would not interfere with any federal administrative regime. There is no federal administrative agency having jurisdiction. Nor is there any specific federal sanction in the statute here for any specific means of self-help, let alone the secondary means adopted here. Indeed, the general policy of Congress has been quite the other way—in the direction of progressive curbing of the secondary boycott in American industry. There is no reason to assume that Congress wanted railway labor to have, on a unique basis, the power to use economic weapons against neutrals in a manner in which American labor generally could not.

The danger of inconsistent state regulation has not been considered a primary factor in the past in determining the permissibility of the application of state law to interstate commerce. In any event here the possibility of inconsistent regulation is theoretical, rather than practical. Finally, if there is inconsistency in practice, Congress can always act.

The *Jacksonville Terminal* decision creates a unique regulatory gap. Under it, no tribunal, federal or state,

judicial or administrative, may regulate the use of economic weapons by rail unions against innocent third parties. And this gap exists despite the fact that the consistent course of federal and state legislation has been against such secondary use of economic weapons. Accordingly, if the court reaches the point, which we contend it need not, we would urge that the *Jacksonville Terminal* decision be overruled.

II. The District Court's injunction also violated the Norris-LaGuardia Act. The District Court held, in denying ACL's Federal injunctive remedies against the picketing, that this case was one "arising out of a labor dispute" and hence within the Norris-LaGuardia Act. Accordingly, Section 4(d) of the Act, which absolutely prohibits injunctions against persons "aiding any person participating or interested in any labor dispute who . . . is prosecuting, any action or suit in any court . . . of any State" is applicable to bar the injunction against state court proceedings. Similarly applicable is Section 7, an independent prohibition which bars all federal injunctions in labor disputes absent the making of certain findings, not made here.

The basic position of the respondents is apparently that the Norris-LaGuardia Act does not apply at all to injunctions against management. The text of the Act does not support any such conclusion. In passing on injunctions against management in labor disputes, this Court has never enunciated any such proposition. The legislative history is clear that the statute was a "two-way street" and that the basic purpose of the statute was a neutral purpose—to take the Federal courts out of the business of granting injunctions in labor cases. The better-considered lower Federal court decisions support this position.

ARGUMENT

I. THE DISTRICT COURT'S INJUNCTION HERE VIOLATED SECTION 2283 OF THE JUDICIAL CODE

A. Section 2283 Forbids the Lower Federal Courts from Adjudicating Federal "Preemption" Defenses by way of an Injunction against Proceedings in the State Courts

In this case, the action of the District Court in enjoining proceedings in the Florida state courts¹ amounted to a flat violation of the anti-injunction statute, Section 2283 of the Judicial Code, and the established law as developed under it.

Section 2283 provides that: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

Section 2283² is the current form of a statutory provision that has been law since 1793.³ The basic purpose

¹ While the injunction in form is simply one against ACL's availing itself of the benefit of the proceedings before the state court, such an injunction has uniformly been treated as tantamount to an injunction against proceedings in a state court for purposes of the Federal anti-injunction statute. See, e.g., *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.*, 309 U.S. 4, 9 (1940); *Amalgamated Clothing Workers v. Richman Brothers Co.*, 348 U.S. 511 (1955); *United Industrial Workers v. Board of Trustees of Galveston Wharves*, 400 F.2d 320, 330-31 (5th Cir. 1968), cert. denied, 395 U.S. 905 (1969). Cf. *Donovan v. Dallas*, 377 U.S. 408, 413 (1964).

² In the Act of March 2, 1793, c. 22, § 5, 1 Stat. 334, Congress sharply limited the power of the Federal courts by providing that "no . . . writ of injunction [shall] be granted to stay proceedings in any court of the state. . . ." This provision became, without substantial change, § 720 of the Revised Statutes, Rev. Stat. § 720

of this statutory prohibition was to minimize instances of collision between the Federal and the state courts. This Court has said that the statute expresses "an important congressional policy—to prevent needless friction between state and federal courts." *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.*, 309 U.S. 4, 9 (1940). As this Court put the philosophy of the statute in *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 141 (1941):

"The guiding consideration in the enforcement of the Congressional policy was expressed by Mr. Justice Campbell, for the Court, in *Taylor v. Carryl*, 20 How. 583, 597:

"The legislation of Congress, in organizing the judicial powers of the United States, exhibits much circumspection in avoiding occasions for placing the tribunals of the States and of the Union in any collision."

The statute mirrors the early commitment of the first Judiciary Act (Act of September 24, 1789, § 25, 1 Stat. 73), which vested appellate jurisdiction in this Court in cases involving Federal issues, to review judgments or decrees "in the highest court of law or equity of a state in which a decision in the suit could be had." This Court sits in judgment to review state court decisions; the lower Federal courts do not. *Cf. Byrne v. Karalexis*, No. —, O.T. 1969, decided December 15, 1969, and separate opinions of Mr. Justice Black and Mr. Justice Stewart, slip op., pp. 6-7,

(1875), and later § 265 of the Judicial Code of 1911, Act of March 3, 1911, c. 231, § 265, 36 Stat. 1162.

Professor Charles Warren indicates that the 1793 Act is a significant illustration of the strong apprehension early felt by Congress of an encroachment by Federal courts on state court jurisdiction. - See Warren, *Federal and State Court Interference*, 43 Harv. L. Rev. 345, 347-48 (1930).

with respect to the reluctance of this Court to permit the lower Federal courts to enjoin pending state criminal proceedings.

Section 2283 is thus "as old as the judicial system of the United States." *Hemsley v. Myers*, 45 Fed. 283, 289 (C.C.D. Kan. 1891). It reflects a long standing Congressional decision—virtually as old as the Constitution—that the state courts are to be trusted to administer defenses based on Federal law, subject to review by this Court when the case has been adjudicated by the highest available state court. "If a state court 'proceeds as the Chancery Court of Tennessee acted, the ultimate vindication of any federal right lies with this Court.'" *Southern R. Co. v. Painter*, 314 U.S. 155, 159-60 (1941). "As part of the delicate adjustments required by our federalism, Congress has rigorously controlled the 'inferior [Federal] courts' in their relation to the courts of 'the states.'" *Toucey v. New York Life Ins. Co.*, *supra*, 314 U.S., at 141.* See also *Stevens v. Frick*, 372 F.2d 378 (2d Cir.

* The basic philosophy of the anti-injunction statute, taken with the provisions for direct review in this Court of the judgments rendered by the highest available state court, was eloquently put by Circuit Judge (later Mr. Justice) Lurton in *Aultman & Taylor Co. v. Brumfield*, 102 Fed. 7, 15 (C.C.N.D. Ohio 1900):

"The remedy of a defendant in a suit in which the decision must turn upon the construction or application of the constitution of the United States, where the federal question is not disclosed by the plaintiff's statement of the case, is to present the question by his pleadings, and, if the right thus set up under the constitution or laws of the United States is denied to him by the highest court of the state to which the controversy can be carried, he may sue out a writ of error from the supreme court of the United States, and thus obtain a review of the decision of the state court upon the federal question directly involved. It would be strange, indeed, if a defendant to an action in a state court, whose defense involved the construction and application of the constitution of the United States, but who could not remove the suit because the federal question did not appear upon the face of

1967), *cert. denied*, 387 U.S. 920 (1967); *Nongard v. Burlington County Bridge Comm'n*, 229 F.2d 622 (3d Cir. 1956); *Collins v. Laclede Gas Co.*, 237 F.2d 633 (8th Cir. 1956).

The anti-injunction statute has been changed in form in minor details on various occasions in the 176 years in which it has been on the books, and various express exceptions have been written into it. Its present form is the product of the revision of the Judicial Code in 1948.⁴ But the basic purpose of the statute has remained the same. This Court has continued to describe the purpose of the anti-injunction statute in the same terms as before the 1948 revision: "The prohibition of § 2283 is but continuing evidence of confidence in the state courts, reenforced by a desire to avoid direct conflicts between the state and federal courts." *Amalgamated Clothing Work-*

the plaintiff's statement of his claim, should have the right to transfer the case to a court of the United States by an independent injunction bill, whereby the state court should be deprived of jurisdiction, and the decision of the same question drawn into the United States court. The provisions for a review by writ of error afford to the complainant ample means for obtaining redress, if in fact it has been subjected to the deprivation of rights secured to it by the provisions of the [federal constitution]. . . ."

⁴ The 1948 revision was somewhat more extensive than the preceding ones. In *Toucey v. New York Life Ins. Co.*, 314 U.S. 118 (1941), § 265, the predecessor of § 2283, of the Judicial Code had been very strictly interpreted by this Court in an opinion by Justice Frankfurter, as forbidding an injunction even where sought to prevent relitigation of a case fully tried in federal court under the single applicable law. Neither § 2283, passed subsequent to the *Toucey* decision, nor the Reviser's Note to that section—which indicated that the revision overruled *Toucey* on its facts (n. 4, p. 34, *infra*)—indicates Congressional intent to provide Federal district courts with appellate power over state court systems, and this is, of course, confirmed by this Court's subsequent decision in *Richman Brothers*, discussed below. For a further discussion of the effect of the 1948 revision, see pp. 33-34, *infra*.

ers v. *Richman Brothers Co.*, 348 U.S. 511, 518 (1955); see also *Leiter Minerals, Inc. v. United States*, 352 U.S. 220, 225 (1957).

Richman Brothers is both the leading case in this Court construing the present version of the anti-injunction statute and the leading authority on the effect that that statute has on any attempt to use the lower Federal courts as a vehicle for the adjudication of a Federal labor "preemption" defense to suits pending in the state courts. In *Richman Brothers*, it was held that a Federal district court was without power to enjoin enforcement of a state court injunction against certain labor union practices, despite the fact that under the substantive law as established by decisions of this Court,⁸ the jurisdiction of the state court was clearly preempted by that of the National Labor Relations Board under the Labor-Management Relations Act. The Court in *Richman Brothers* held that in Section 2283 Congress had made it clear that injunctive remedies in the lower Federal courts against state court proceedings were not to be substituted for the normal, orderly processes of state court appellate review and this Court's reviewing jurisdiction over the state courts by certiorari and appeal.

The Court in *Richman Brothers* also made it plain that an exception was *not* to be engrafted upon Section 2283 "whenever the moving party in the District Court alleges that the state court is 'wholly without jurisdiction over the subject matter, having invaded a field preempted by Congress.'" 348 U.S., at 515. The Court stated:

⁸ The principal such case being *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468 (1955), a case decided only one week before the decision in *Richman Brothers*, and acknowledged by the Court in *Richman Brothers* to be controlling on the merits. 348 U.S., at 512, 514.

"[W]e cannot accept the argument of petitioner and the [National Labor Relations] Board, as *amicus curiae*, that § 2283 does not apply whenever the moving party in the District Court alleges that the state court is 'wholly without jurisdiction over the subject matter, having invaded a field preempted by Congress.' No such exception had been established by judicial decision under former § 265 [the predecessor of § 2283, see n. 2, pp. 24-25, *supra*]. In any event, Congress has left no justification for its recognition now." 348 U.S., at 515.*

In short, the teaching of *Richman Brothers* is that the Federal district courts do not sit as appellate courts over the state tribunals in cases where preemption of state court remedies in labor matters is claimed.—The effects of a contrary decision are obvious. If the lower Federal courts could adjudicate the Federal preemption defense through proceedings to enjoin state court litigation, state court judgments would be reviewed before they were ripe for review—before the state courts had finally dealt with the case to the best of their ability—and they would be reviewed in a nonuniform way, by the ninety Federal district courts in the country. "Misapplication of this Court's opinions is not confined to the state courts" *Richman Brothers, supra*, 348 U.S., at 519. Federal district courts can differ with respect to the meaning of this Court's opinions, just as state courts can. It is not impossible that district judges in different districts within a state might take varying views of the extent of a Federal preemption defense provided by this Court's de-

* The case law before the 1948 revision indicated that an injunction against proceedings in the state court was barred even where it was alleged that the state court was without jurisdiction. See *Puget Sound Power & Light Co. v. Asia*, 2 F.2d 485, 491 (W.D. Wash. 1921).

cisions, and state court proceedings in various localities in a single state might be enjoined or permitted to continue depending on the views of the Federal district court involved.

This case is governed in all respects by *Richman Brothers*.⁷ In essence, what the BLE is seeking to do here is to use the lower Federal courts to adjudicate a preemption defense—based upon the BLE's reading of this Court's opinion in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969)—to a proceeding pending in the Florida state courts. This is what *Richman Brothers* holds may not be done.

Indeed, it appears that this case is a stronger one for the application of the anti-injunction statute than *Richman Brothers*. In *Richman Brothers* it had been established that the state courts had no jurisdiction to grant their injunction against the picketing; yet this Court nonetheless held that a Federal court injunction against the state court's assuming jurisdiction was barred by Section 2283. 348 U.S., at 512, 520-21. That situation involved the Labor Management Relations Act. Here, the decision of this Court in the railway labor context which is relied upon by the BLE in order to assert that the state court injunction against the picketing was erroneous repeatedly held that "the Florida courts are not pre-empted of jurisdic-

⁷ Until the case at bar, the courts of appeals had been consistent in following the teaching of this Court that § 2283 prohibits enforcement of a Federal preemption defense, whether or not meritorious, by injunction against state court proceedings. *International Association of Machinists v. United Aircraft Corp.*, 333 F.2d 367 (2d Cir. 1964), cert. denied, 379 U.S. 946 (1964); *German v. South Carolina State Ports Authority*, 295 F.2d 491 (4th Cir. 1961); *NLRB v. Swift & Co.*, 233 F.2d 226 (8th Cir. 1956); *T. Smith & Son v. Williams*, 275 F.2d 397 (5th Cir. 1960). See also *Williamson v. Puerifoy*, 316 F.2d 774, 775 (5th Cir. 1963), cert. denied 375 U.S. 967 (1964).

tion over this cause." *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 390 (1969); *id.*, at 375-77.

The respondents have occasionally seized on certain language in *Richman Brothers* (see 348 U.S., at 519) to seek to explain that decision as turning on a lack of jurisdiction in the Federal court. The District Court likewise seems to have taken this view (A. 195), namely, that the meaning of Section 2283 was that wherever the District Court had jurisdiction apart from Section 2283, it could proceed to enter an injunction against state court proceedings, or, put conversely, that *Richman Brothers* held only that a district court may not enjoin proceedings in a state court where the district court had no jurisdiction itself. If this were what Section 2283 meant, it would be essentially meaningless. On its face, Section 2283 is a prohibition against the granting of injunctions in cases otherwise within the jurisdiction of the district court. The provision would hardly be necessary if its only purpose was to prevent the district courts from issuing injunctions in cases where they had no jurisdiction.

Another suggestion that the respondents have made is that the Federal court may enjoin the state court proceeding because the Federal court proceeding was commenced first. (Br. Op., p. 17) The decisions of this Court, however, have rejected any implied exception to the anti-injunction statute based on the fact that the Federal court proceeding was commenced first. See *Kline v. Burke Construction Co.*, 260 U.S. 226 (1922); *Southern R. Co. v. Painter*, 314 U.S. 155 (1941).^{*}

^{*} The above decisions enunciate the rule where, as here, the suits are actions in *personam*. The rule is otherwise where the Federal court first obtains possession of a *res*. See *Kline v. Burke Construction Co.*, *supra*, 260 U.S., at 235. See also n. 3, p. 33, *infra*.

It is not without importance to note that this case furnishes a vivid example of the consequences of Federal district courts undertaking to sit as appellate tribunals to review state court proceedings. Despite the fact that, at the request of the BLE and the other respondents, the Florida circuit judge indicated a willingness to have a final judgment entered upon application, so that an appeal could be taken to the Florida appellate courts, the BLE has taken no steps whatsoever, in the more than six months since the rendition of the circuit court's June 3, 1969, letter opinion, to have judgment entered and to pursue its appellate remedies guaranteed under Florida law. Instead of following this orderly procedure, this case has been adjudicated in the Federal courts by way of litigation through injunction proceedings of the validity of the preemption defense, and has occupied the attention of 15 Federal judges in this Court and the lower courts. Whether much time will be saved in the long run over what would have been the case had the normal appellate remedies in Florida, and review by this Court, if necessary, been pursued is highly conjectural. This example of the practical consequences of the BLE's course of action underscores the policy behind the anti-injunction statute.

B. This Case Is Not Within Any of the Statutory Exceptions to the Prohibitions of Section 2283

It is the position of the respondents that the injunction here was justified by the second and third exceptions in Section 2283 which permit the injunction of state court proceedings "where necessary in aid of its [the District Court's] jurisdiction, or to protect or effectuate its judgments."¹

¹ The first exception, adapted from the pre-1948 version of the statute, permits an injunction to issue "as expressly authorized by

This Court has pointed out that these exceptions are restricted to "special circumstances." *Donovan v. Dallas*, 377 U.S. 408, 412 (1964). The authorities indicate that the purpose of the exception for injunctions "necessary in aid of its jurisdiction" was to "make clear the recognized power of the Federal courts to stay proceedings in state cases removed to the district courts" (see Reviser's Note to Section 2283, n. 4, p. 34, *infra*) and to apply in the situation of a "res" over which only one court could take jurisdiction. See, e.g., *Hyde Construction Co. v. Koehring Co.*, 388 F.2d 501, 509 (10th Cir. 1968); *cert. denied*, 391 U.S. 905 (1968). See also *Donovan v. Dallas*, 377 U.S. 408, 412 (1964).² The exception for injunctions necessary to "protect or effectuate" Federal court judgments was inserted to permit the Federal courts to enjoin the relitigation, in state courts, of controversies fully adjudicated by the

Act of Congress." There is no such Act of Congress here, and BLE has never relied on this ground of exception. For reasons similar to those discussed in *Richman Brothers*, 348 U.S., at 516-19, the general terms of the Railway Labor Act do not constitute any "express" authorization.

² As originally proposed in 1945, the revision to § 2283 was similar to the form finally enacted, except that it did not contain the third, or the "protect or effectuate its judgments," exception. The second exception, "where necessary in aid of its jurisdiction," was explained by the form of the Reviser's Note which appeared in the preliminary draft of 1945 as "added to conform to Section 1652 of this title [§ 1651, the "All Writs Act," in the form finally enacted] and to make clear the recognized power of the federal courts to stay proceedings in state cases removed to the district courts." House Committee on Revision of the Laws, Revision of Federal Judicial Code, Preliminary Draft (Committee Print 1945), Note to § 2284. The removal exception had been recognized in the case law in *French v. Hay*, 22 Wall. 250 (U.S. 1875), and *Dietzsch v. Huidekoper*, 103 U.S. 494 (1881).

³ This "res" exception had been recognized in the pre-1948 cases. See *Taylor v. Carryl*, 20 How. 583 (U.S. 1857); cf. *Kline v. Burke Construction Co.*, 260 U.S. 226 (1922).

Federal courts. See Reviser's Note to Section 2283;⁴ *Commerce Oil Refining Corp. v. Miner*, 303 F.2d 125, 127 (1st Cir. 1962); *Hayes Industries, Inc. v. Caribbean Sales Associates, Inc.*, 387 F.2d 498, 501 (1st Cir. 1968).⁵

⁴ The text of the Reviser's Note to § 2283 is as follows:

"An exception as to Acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions.

"The phrase 'in aid of its jurisdiction' was added to conform to section 1651 of this title [see n.2, above] and to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts.

"The exceptions specifically include the words 'to protect or effectuate its judgments,' for lack of which the Supreme Court held that the Federal courts are without power to enjoin relitigation of cases and controversies fully adjudicated by such courts. (See *Toucey v. New York Life Insurance Co.*, 62 S.Ct. 139, 314 U.S. 118, 86 L.Ed. 100. A vigorous dissenting opinion (62 S.Ct. 148) notes that at the time of the 1911 revision of the Judicial Code, the power of the courts of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change.)

"Therefore the revised section restores the basic law as generally understood and interpreted prior to the *Toucey* decision.

"Changes were made in phraseology."

⁵ Professor Moore was consultant to the revisers, and his testimony on the section related to the addition of the third exception, injunctions necessary to "protect or effectuate" Federal court judgments. He stated: "Section 2283 changes the construction which the Supreme Court put upon present 28 U.S.C. Section 379 in *Toucey v. New York Life Insurance Company* (1941), 312 U.S. 44 [sic] . . . where the Supreme Court ruled that a Federal court could not enjoin relitigation of a matter in a State court proceeding; in other words, the Federal district court could not protect its judgment." Hearings on H.R. 1600 and H.R. 2055 before Subcommittee No. 1 of the House Committee on the Judiciary, 80th Cong., 1st Sess. (1947), p. 29.

Accordingly, the final Reviser's Note to § 2283 says that with the exception of overruling the specific holding in *Toucey*, the section "restores the basic law as generally understood and interpreted prior to the *Toucey* decision."

This case presents none of these situations. Neither does the situation here lend itself to a fair application of the text of the statutory exceptions in question. It cannot fairly be said that the injunction against the state court proceedings was necessary to aid the District Court's jurisdiction, or to protect or effectuate any judgment which it had rendered. The only proceeding pending before the District Court was ACL's own suit for an injunction against the same picketing, in which, the day after the suit was filed and two years before the BLE's motion for an injunction against the state court proceedings, the District Court found that the only relief prayed for by the ACL could not be granted by reason of the Norris-LaGuardia Act's ban on injunctions.* The suit had then lain dormant for two years until it was revived by the defendant BLE as a purported basis for the injunction against state court proceedings now under review. BLE had never sought any affirmative relief in that suit until it filed the motion for an injunction against the state court proceedings.

It could not conceivably be claimed that the proceedings in the District Court required an injunction against the state court proceedings as necessary to aid them, or as necessary to protect or effectuate any judgment to be entered in the District Court proceedings. The sole relief sought by ACL in the District Court proceeding was an injunction against the picketing. The holding of the District Court on the temporary injunction application was

* Our position does not rest on whether the fact that the District Court had no power to grant the only remedy against BLE prayed for by the ACL's complaint means that the District Court had no "jurisdiction" in the sense of § 2283 that an injunction against the state court proceedings was necessary to aid. Cf. *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557 (1968).

that such an injunction could not be granted, by reason of the Norris-LaGuardia Act.⁷

The fact that the District Court held that it was without power to grant an injunction by reason of the Norris-LaGuardia Act does not mean that it had to enjoin proceedings for a similar injunction sought before the state courts in order to aid its jurisdiction or to protect or effectuate its judgments. For the Norris-LaGuardia Act was intended essentially as a limitation on the Federal equity power—the power of the Federal courts to grant injunctions. The Act “explicitly applies only to the authority of United States courts ‘to issue any restraining order or injunction.’ All other remedies in federal courts and all remedies in state courts remain available.” Frankfurter & Greene, *The Labor Injunction* (1930), p. 220. “The bill does not take one iota of jurisdiction . . . from the State courts and does not change any State law.” Remarks of Representative LaGuardia, 75 Cong. Rec. 5478 (1932).

The central point is, then, that the ruling of the District Court to the effect that ACL could not obtain a Federal injunctive remedy in this matter is complete in and of itself. It does not affront the District Court’s jurisdiction for a state court then to exercise its jurisdiction; nor does such an exercise by a state court in any way interfere with any judgment of the District Court. “If the enjoined state proceeding could not prejudice any otherwise proper disposition of some claim pending in the federal

⁷ In arguing the case on the temporary injunction application in 1967, respondent’s counsel engaged in the following colloquy:

“The Court: You’re basing your case solely on the Norris-LaGuardia Act?”

“Mr. Milledge [attorney for BLE]: Right. I think at this point of the argument, since Norris-LaGuardia is clearly in point here.” (A. 63)

suit, the injunction cannot be in aid of invoked federal jurisdiction." *Muscarella, Inc. v. Central Iron Mfg. Co.*, 328 F.2d 791, 794 (3d Cir. 1964).^{*} See also *Red Rock Cola Co. v. Red Rock Bottlers, Inc.*, 195 F.2d 406 (5th Cir. 1952).

^{*} For reasons similar to those cited in *Richman Brothers*, 348 U.S., at 517, *Capital Service, Inc. v. NLRB*, 347 U.S. 501 (1954), is not controlling. Under the facts of that case, the provision for interim remedies in Federal court vested in the National Labor Relations Board by § 10(l) of the Labor-Management Relations Act was found to be a sufficient authorization for the Board to obtain an injunction against proceedings in the state court by private parties where the Board had filed a § 10(l) complaint in the district court. The Court found the second exception ("necessary in aid of its jurisdiction") applicable; decision might also have turned on the first exception, since § 10(l) expressly authorizes a district court to grant such injunctive relief "as it deems just and proper, notwithstanding any other provision of law." See the discussion in *Richman Brothers*, *supra*, at 517, which so suggests; see *Studebaker Corp. v. Gittlin*, 360 F.2d 692, 696-97 (2d Cir. 1966), so analyzing *Capital Service*. In *Capital Service* the Board was seeking a limited injunction under § 10(l), which would permit certain aspects of the picketing. The employer, who had proffered the unfair labor practice charges with the Board, then proceeded in state court to seek and obtain a much broader injunction completely prohibiting the picketing in question.

Capital Service is clearly distinguishable on any of a variety of grounds. In the first place, there is no administrative regulatory regime here with exclusive jurisdiction to enforce the Railway Labor Act. In the second place, the plaintiff here, unlike the plaintiff in *Capital Service* (the NLRB), does not have any right to an injunction from the District Court, let alone any right to formulate an administrative decree, both of which might be entitled to protection from a contrary state court judgment. Indeed, the plaintiff here, the ACL, was held by the District Court to be barred from obtaining any injunctive relief against the picketing by reason of the Norris-LaGuardia Act. In the third place, there is no statute here like § 10(l) which could be said expressly to authorize the injunction. Fourthly, it was shortly afterwards held in *Leiter Minerals, Inc. v. United States*, 352 U.S. 220 (1957), that § 2283 does not apply in a suit by the United States. Finally, it is clear, as we develop below, pp. 40-42, that there can be no conflict between the decision of the District Court in denying the 1967 injunction and any action taken by the state court.

BLE has urged that the April 26, 1967, order of the District Court constituted a full and complete, and presumably exclusive, determination of the legal rights of the parties to the suit, not simply a decision based on the Norris-LaGuardia Act, and has argued from this premise that an injunction against a subsequent state court injunction would, on this account, be justified by the second and third exceptions in Section 2283.

In the first place, this contention clearly overstates the effect of the District Court's order of April 26, 1967. BLE's argument simply cites the District Court's conclusions of law (A. 66-68) out of context. A full reading of those conclusions of law makes it plain that the court's ultimate holding is that the Norris-LaGuardia Act bars the requested injunction. The subsidiary conclusions as to the right of self-help having matured as between the direct parties to the FEC-BLE dispute simply are articulations of the reasons why the Norris-LaGuardia Act was held applicable to bar the injunction. These reasons were given by the District Court to distinguish the "accommodation" cases which indicate that where the Railway Labor Act's processes are still available between the parties—as they were no longer between FEC and BLE—the Norris-LaGuardia Act does not bar an injunction. See, e.g., *Brotherhood of Railroad Trainmen v. Chicago River & I.R. Co.*, 353 U.S. 30, 40 (1957). See *Brotherhood of Locomotive Engineers v. Baltimore & O.R. Co.*, 372 U.S. 284 (1963).

Indeed, the controlling authority cited by the District Court in this connection in its April 26, 1967, order was this Court's four-to-four affirmance, 385 U.S. 20 (1966), of the Fifth Circuit's ruling that the Norris-LaGuardia Act barred a Federal injunction against the picketing at

the Jacksonville Terminal. *Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co.*, 362 F.2d 649 (1966).^{*} But that decision made it plain, indeed "emphasized," that in a decision turning on the Norris-LaGuardia Act the sole effect of the court's action is to pass on the "enjoinability" of the defendants' activity "and not . . . its legality for any other purpose." *Id.*, at 653. It is therefore completely without foundation to suggest that the District Court's April 26, 1967, order somehow amounts to a complete and exclusive declaration of the rights of ACL and BLE, furnishing a predicate for an injunction against state court proceedings under the exceptions for injunctions "necessary in aid of" the District Court's jurisdiction or "necessary . . . to protect or effectuate its judgments."

The fact that the District Court's order turned on the Norris-LaGuardia Act is not the only reason why it cannot be claimed to be a final determination of all the substantive

^{*} As indicated above (p. 12, n. 8), each of the cases cited by the District Court, except one cited for a very general proposition, turns on the Norris-LaGuardia Act.

The District Court also cited § 20 of the Clayton Act (A. 67), and this citation has been seized upon by the BLE as establishing that the District Court's order in effect amounted to a declaration of the parties' substantive rights. The second paragraph of § 20 does contain a provision that certain acts enumerated in that paragraph shall not "be considered or held to be violations of any law of the United States." However, the first paragraph of the section, which is broader in scope, is a simple anti-injunction provision, a distant forbear of the Norris-LaGuardia Act. The District Court's order does not indicate whether it is relying on the first paragraph or the second paragraph of § 20. However, the two cases cited in conclusion 7, *Brotherhood of Locomotive Firemen and Enginemen v. Florida East Coast R. Co.*, *supra*, and *Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co.*, *supra*, are both simply anti-injunction cases; this makes it evident that the reference to § 20 of the Clayton Act simply was for the proposition that the respondents' conduct was not subject to Federal court injunction.

legal rights of the parties. The District Court in 1967, in denying ACL a temporary injunction, could not and did not purport to define the ultimate Federal legal rights of the parties. Even apart from the Norris-LaGuardia Act, no definition of those rights could come short of a final hearing on permanent relief. "[A]n application for an interlocutory injunction does not involve a final determination of the merits. . . ." *Public Service Comm'n v. Wisconsin Tel. Co.*, 289 U.S. 67, 70 (1933). See also *Industrial Bank of Washington v. Tobriner*, 405 F.2d 1321, 1324 (D.C. Cir. 1968); *Benson Hotel Corp. v. Woods*, 168 F.2d 694, 696 (8th Cir. 1948); *Sinclair Refining Co. v. Midland Oil Co.*, 55 F.2d 42, 45 (4th Cir. 1932) ("The granting of the temporary injunction does not determine the rights of the parties. . . ."). The District Court's April 26, 1967, order could not have been one which was "on the merits" or which "determined the rights of the parties." All that it was was an order denying temporary, interim relief.

In the second place, even if the District Court's order could somehow amount to a final adjudication of the parties' rights under Federal law, it could not be said to have constituted any adjudication of their rights under state law. The complaint in the Federal court filed by ACL was based solely on Federal law. Conversely, the complaint in the state court action was based solely on state law. Even if the Federal court's April 26, 1967, order amounted to an adjudication as to the parties' rights and duties under Federal law, it did not amount or purport to amount to an adjudication of what their rights and duties might be under state law. Thus, this case cannot even be claimed fairly to fall within the scope of the 1948 revision referred to in the Reviser's Note as overruling the *Toucey* case in situations of relitigation of a case fully tried. See nn. 4 and 5, p. 34, *supra*.

The case presented here is not one of relitigation of a claim for money damages on a note or for breach of contract, for example, as to which there is but a single governing law. Contrast *Toucey v. New York Life Ins. Co.*, *supra*, specifically overruled in the 1948 revision (p. 34, *supra*). It is not a case of a state-court relitigation of "the same cause of action" adjudicated in Federal court. See *Toucey v. New York Life Ins. Co.*, *supra*, 314 U.S., at 142 (dissenting opinion). Rather, it is one in which there are claims both of violation of Federal and of state-created rights, as to which separate injunctive remedies were sought; an injunction to enforce the Federal rights was sought in Federal court and one to enforce the state-created rights was sought in state court. What the District Court enjoined here was not relitigation of a unitary case which had been fully tried before it but the pursuit of separate remedies in the state court for the vindication of rights having a separate origin. To be sure, the injunction was entered in the name of the conclusion that Federal law precluded or preempted enforcement of those state-created rights.¹⁰ But that is simply to say that the

¹⁰ The principal authority relied upon by the District Court for the applicability of the third exception to § 2283 was *United Industrial Workers v. Board of Trustees of Galveston Wharves*, 400 F.2d 320 (5th Cir. 1968), *cert. denied*, 395 U.S. 905 (1969). There, the Court of Appeals held it proper for a district court to enjoin the enforcement of a state court injunction which prohibited primary picketing by a union subject to the Railway Labor Act where extensive proceedings respecting the dispute had already been had in Federal court and injunctive orders there entered in favor of the party seeking the injunction against the state court proceedings. The court there held (400 F.2d, at 331-34) that such an injunction was appropriate under the exception to § 2283 which permits injunctions where necessary to protect or effectuate the judgments of a district court. But the specific reason for this holding was that the District Court had previously issued a mandatory injunction, under § 6 of the Railway Labor Act, requiring management, which had refused to bargain with the

District Court here adjudicated a so-called preemption defense through the injunctive proceedings. As we have demonstrated above, pp. 24-32, that is what the decisions of this Court teach may not be done.

C. Even if Adjudication of a Preemption Defense by way of Injunction against State Court Proceedings were within the Competence of the District Court, the State Court's Distinction of the Jacksonville Terminal Case was Well Taken and its Action Should not have been Enjoined by the District Court

The effect of the grant of the motion of the BLE seeking an injunction against the state court proceedings is simply to make an injunction proceeding in the Federal court serve as substitute for the normal appellate procedures, including review by this Court, with respect to a judgment in the state court. Indeed, the only authority cited by the Court of Appeals was this Court's decision in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969), a decision which arose on certiorari to the state courts and which has nothing whatsoever to do with Section 2283 or the exceptional circumstances under which a lower

union in the manner required by §6 of the Act, to proceed so to bargain. The Court of Appeals concluded that the District Court's mandatory order requiring the parties to bargain as required by § 6 could be frustrated by the pendency of a state court injunction which limited the parties' rights of self-help if the bargaining proved inconclusive. See 400 F.2d, at 331.

Here, there is no order of the District Court requiring the parties to this suit to take any action with respect to each other. Indeed, the only affirmative order ever entered by the District Court in this matter was its order enjoining proceedings in the state court. It cannot remotely be said that the injunction against the state court proceedings granted by the District Court is necessary to protect or effectuate any other order or judgment which that court has entered. To say that the injunction was necessary to effectuate any judgment of the District Court is simply to lift oneself by one's bootstraps.

Federal court may enjoin proceedings in a state court.¹ It is plain that the Court of Appeals took the view that despite the anti-injunction statute, it was at liberty to determine the correctness of the state court's order in the injunction proceedings in Federal court, and by its citation of the *Jacksonville Terminal* case, it indicated that it believed that the state court acted erroneously and that, accordingly, its judgment was properly enjoined. This is precisely what this Court's decision in *Richman Brothers* teaches may not be done. See part A, pp. 24-32, *supra*.

As we have demonstrated above, there is no basis for the Federal courts to consider a preemption defense or other Federal defense against state court proceedings, however well founded, through the extraordinary remedy of an injunction against the state court proceedings. However, even if there were, the state court had a well-founded basis for distinguishing the *Jacksonville Terminal* decision; that decision does not establish that the BLE had a valid defense in the state court proceedings.

¹ If the theory of the courts below—that an injunction against state court proceedings issued by a Federal court can be made to serve as a substitute for the normal processes of appeal and certiorari in a labor preemption case, at least after a district court has refused, by reason of the Norris-LaGuardia Act, to enjoin the labor conduct in question—is correct, it was hardly necessary in the *Jacksonville Terminal* case itself for the brotherhoods to have pursued their remedies through the state courts and to this Court on certiorari. Since in that very case a Federal court injunction against the Jacksonville Terminal picketing had been held barred by the Norris-LaGuardia Act, *Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co.*, 362 F.2d 649 (5th Cir. 1966), *aff'd*, by an equally divided Court, 385 U.S. 20 (1966), the same legal theory that is advanced here would have supported the District Court, upon receipt of the mandate of the Court of Appeals' holding the Federal injunction barred by reason of the Norris-LaGuardia Act, in enjoining the proceedings relating to the Jacksonville Terminal in the state court.

In the *Jacksonville Terminal* case, this Court held that a state court injunction against picketing of the jointly-owned Jacksonville Terminal facility was improper. The sharply-divided Court stressed the joint ownership of the Terminal Company facility by the struck FEC together with the other carriers (394 U.S., at 372) and the unusual nature of the joint venture agreement providing for the joint management of the facility by the FEC and the other carriers (394 U.S., at 373 n. 5). The fact that the Terminal Company provided various services necessary to the FEC's operations, including switching, signaling, track maintenance, and repairs on its cars and engines, was emphasized. (394 U.S., at 373) The Court concluded, as had the Fifth Circuit in the case involving the Federal court injunction against picketing of the Jacksonville Terminal, that "despite the legal separateness of the Terminal Company's entity and operation, it cannot be disputed that the facilities and services provided by the Terminal Company *in fact* constitute an integral part of the day-to-day operations of the FEC. . . ." (*Ibid.*)

In analyzing the legal issues and drawing upon an analogy to the situation prevailing under the National Labor Relations Act, the Court observed that if the "common situs" rules developed under that Act were applied to the situation at the Jacksonville Terminal property, "considering, for example, the FEC's substantial regular business activities on the terminal premises, FEC's relationship with respondent [the Terminal Company] and the other railroads using the premises, the mixed use in fact of the purportedly separate entrances [for employees of the various carriers], and the terminal's characteristics which made it impossible for the pickets to single out and address only those secondary employees engaged in work con-

connected with FEC's ordinary operations on the premises—the state injunction might well be found to forbid petitioners [the unions] from engaging in conduct protected by the National Labor Relations Act.” 394 U.S., at 389-90.

In the case of the Moncrief Yard, no such situation is presented. The Moncrief Yard is not part of the Jacksonville Terminal common facilities; while at one point it adjoins the Jacksonville Terminal properties, the functions performed in the two locations are completely different and the factors of common operation and use, so heavily relied upon by the Court in *Jacksonville Terminal*, are completely lacking as to the Moncrief Yard. The Moncrief Yard is owned solely by the Seaboard Coast Line Railroad. FEC neither exercises nor participates in the exercise of any managerial discretion at the yard. No SCL employees engaged in work connected with the FEC's operations work there. The yard performs no services for the FEC. No FEC cars or engines are repaired or serviced there.

Moncrief Yard is not a mere interchange facility serving and controlled by a group of carriers. The primary purpose of Moncrief Yard is the classification of ACL rail traffic in no way connected with the FEC. The only relationship that the yard has with the FEC is “pick-up and delivery”: FEC employees bring cars to the premises on a designated track, which cars are left to be picked up by SCL employees and included as part of SCL's ongoing train movements and vice versa, SCL employees cut out from their trains cars which will be handled southbound along the east coast of Florida by the FEC, to be picked up by FEC employees.* That interchange is re-

* Respondents have repeatedly claimed that Moncrief Yard “is an integral and necessary part of FEC's operations” and that the District Court's order of April 26, 1967, so held. This is not the

quired by Federal law and mandated by an existing Federal court injunction. Interstate Commerce Act, 49 U.S.C. §§ 1(4), 1(11), 1(15), 1(17) and 3(4); *Florida East Coast R. Co. v. Jacksonville Terminal Co., et al.*, U.S.D.C., M.D. Fla., No. 63-16-Civ-J, Order of January 30, 1963. At the point when ACL employees refused to move rail cars in Moncrief Yard, the cars were legally and factually "owned" and controlled by ACL; FEC had nothing more to do with them.

The nature of the picketing itself in this case is, moreover, quite different from that at Jacksonville Terminal. There, FEC employees reported for work at the facility, using a variety of rail, road and foot entrances. FEC employees were regularly within the premises on a full-time basis. Moreover, service work was done by others for the FEC on the premises. Here, FEC employees do not report for work or leave work at Moncrief Yard. They enter it by rail on switching engines, staying long enough only to drop off or pick up cars or, in certain cases, to wait for a new cut of cars to pick up after dropping one off. The picketing here was directed solely at the ACL employees, primarily when they reported for work; indeed, it appears that telephone calls were made during the night to ACL employees at home. The picketing was not confined to the

case. All that that order found was that "*The use of ACL's Moncrief Yard by FEC to receive and deliver freight is an integral and necessary part of FEC's operations.*" (A. 66, emphasis supplied.) There is a considerable difference. The holding simply means that FEC needs to interchange with carriers whose lines extend beyond Florida in order to carry on its business and that this interchange is in fact performed by the FEC dropping off and picking up cars at Moncrief Yard. The finding is not to the effect that Moncrief Yard is a place devoted to serving or doing the work of FEC, as this Court apparently held to be the case of the Jacksonville Terminal facilities in the *Jacksonville Terminal* case. 394 U.S., at 373.

places where the interchange was effected or restricted to times when FEC employees were on the premises. Rather, the picketing was the delivery of a general message to ACL employees to treat cars which had originated on, or were destined to, the FEC as "hot cars," and not to handle them. See *Brown Transport Corp. v. NLRB*, 334 F.2d 30 (5th Cir. 1964); *NLRB v. Carpenters District Council of Kansas City*, 383 F.2d 89 (8th Cir. 1967).³

Thus, to take as analogy the cases decided under the Labor-Management Relations Act, the picketing was not primary, as the Court in *Jacksonville Terminal* apparently deemed the picketing there to be at least in part. There was here no "attempt to minimize the effect of [the] picketing . . . on the operations of the neutral employers utilizing" the yard. See *Electrical Workers, Local 761 v. NLRB*, 366 U.S. 667, 678 (1961). The picketing was not restricted to a place, not on the primary employer's premises, which was in effect a continuation of his premises, as the Court may have deemed the Jacksonville Terminal to be, nor one where "the picketing employees made no attempt to interfere with any of the [connecting] railroad's operations for" persons other than the FEC. See *United Steelworkers v. NLRB*, 376 U.S. 492, 499 (1964). The message, rather, of the picketing was to treat FEC-originated or FEC-destined cars as "hot cars," at least within the limits of the yard, which had the inevitable effect of blocking operations in the yard.

On this basis, the decision of the Florida circuit judge that the decision in *Jacksonville Terminal* was distinguish-

³ The cited cases are LMRA cases which hold that in the case of deliveries by the struck employer to a neutral site, picketing is unlawfully secondary if it takes place out of the presence of the employees of the struck employer. See particularly the *Carpenters* case, 383 F.2d, at 94.

able from the case before him (A. 181-82) was clearly a decision for which there was a substantial basis.—We are not aware of the dimensions of the exception to Section 2283 which the respondents are attempting to suggest in this case. It may be that their point is that there is an exception to Section 2283 where a state court decision refusing to honor a preemption or preclusion defense is so lacking in substance as to suggest the absence of good faith, or where the question of preemption is so clear as not to be “arguable,” as they put it. (Br. Op., p. 13) Perhaps their point is that in this sort of situation, the frictions that Section 2283 was designed to prevent, and the statute’s policy of avoiding premature review of state court decisions and of having those decisions reviewed in a uniform way by this Court, could somehow be deemed to be secondary.—We observe in passing that in *Richman Brothers*, where Section 2283 was held controlling, it was perfectly plain that state court action against the picketing in question was prohibited by Federal law; this Court had expressly so held a week before in a decision acknowledged to be controlling.—However, if the “arguability” of the conclusion that state law is not preempted is to be the test, we believe it plain that the state circuit court here acted on the basis of a substantial distinction between the facts here and the facts in *Jacksonville Terminal*.⁴ If the state Circuit Court opinion was so manifestly incorrect, one wonders

⁴ In opposing certiorari, the BLE found it necessary to characterize the state court judge as displaying “complete intransigence” and as wilfully continuing his injunction “in the face of what even he termed the ‘final conclusion’ of this Court.” See Br. Op., p. 10. A reference to the state court judge’s letter opinion makes it plain that he is referring to the “final conclusion” of this Court as to the Jacksonville Terminal situation, not as to the situation before him (A. 181), and that his opinion simply makes a conscientious distinction of the Jacksonville Terminal case on its facts from the situation prevailing at the Moncrief Yard.

why the BLE has not pursued its state court remedies. As of this writing, more than six months have passed without the BLE lifting a finger to have the Circuit Court enter a final judgment, as that court has agreed it would, from which an appeal could be prosecuted to the Florida District Court of Appeal. If the case is not a clear one of patent error by the Circuit Court, there is, of course, that much more reason for not permitting the District Court to act as an appellate tribunal over the state court proceedings.

Even if the rule that the respondents are suggesting is that, on one basis or another the ruling of the Florida Circuit Court was reviewable in plenary fashion in the Federal District Court, it is, we submit, still the case that the Circuit Court's judgment was right and that the decision of this court in the *Jacksonville Terminal* case does not protect the picketing at bar in the Moncrief Yard situation.

This Court has twice held that FEC employees could picket the Jacksonville Terminal, which this Court characterized as a "common situs" and joint facility of FEC and the other carriers. 394 U.S., at 389-90. Curiously enough, the unions have not exercised this privilege and now seek to move north to picket a totally separate and innocent carrier at a location which can hardly be called a "common situs" or joint facility. That picketing appears to have proceeded on a "hot car" basis, aimed not at picketing the interchange, but at treating cars which originate on or are destined for the FEC as "hot." Neither Federal law nor any established Federal labor policy or decision of this Court dictates that this sort of picketing be free from restraint under state law. The assertion that it does means that any railway labor dispute which has matured to the point of self-help as between the parties may form the

basis for an escalation of their economic conflict to involve innocent third-party carriers without apparent geographic limit. For if the Moncrief Yard can be tied up because cars which originated on or are destined for the FEC come there, other classification yards throughout the country through which those cars successively move could receive similar treatment. Once picketing is held permissible at a facility, like Moncrief Yard, which is not a joint terminal facility involving the struck carrier, simply because cars originated on or destined for the struck carrier are handled there, this "hot car" theory can be applied to any yard facility in the country. Indeed, so long as the picketing is done by rail unions (see p. 56, *infra*), there seems to be no reason in theory why the shippers and receivers of the "hot cars" could not also be picketed.

Even as applied to a joint terminal facility situation, the divided Court in the *Jacksonville Terminal* decision candidly characterized the result it reached as "unsatisfactory." 394 U.S., at 392. The Moncrief picketing by contrast does not involve the judiciary in the task of unraveling the problems of what sort of picketing might be permitted in a situation involving continual presence of the primary, struck employer at a "common situs", a task which the Court declined to undertake in *Jacksonville Terminal*. See *id.*, at 388-90.

Here, no FEC employees reported for work at the Moncrief Yard. All that FEC employees did at the Yard was to "pick up and deliver" cars after reporting for work elsewhere and after arriving at Moncrief by way of switching movements. All the picketing and messages involved here were directed to the employees of the neutral employer, the ACL. While it may not be possible to draw "bright lines" between primary activity and secon-

dary activity in all cases (394 U.S., at 388), we suggest that a bright enough line can be drawn between primary picketing or picketing at a joint terminal facility, on the one hand, and picketing of neutral employees at a neutral carrier's yard on a "hot car" basis, on the other. Indeed, these lines would be considerably less stringent on the unions than those drawn under the LMRA with respect to union secondary conduct at premises primarily used by a neutral employer. See *Brown Transport Corp. v. NLRB*, *supra*; *NLRB v. Carpenters District Council of Kansas City*, *supra*. We suggest that no overriding principle of Federal law precludes the states from applying their general laws with respect to the protection of neutral businessmen from secondary picketing to a situation involving the picketing of a neutral carrier's classification yard.

For the conclusion to be reached that there is a Federal inhibition against any interference with picketing as far removed from the normal processes of self-help by one disputant against the other as that presented here would be to stretch the facts of *Jacksonville Terminal* well beyond their breaking point. Certainly, the general language of the Court at the conclusion of its opinion in *Jacksonville Terminal*, 394 U.S., at 392-93, so often cited by the respondents in favor of a general *carte blanche* to engage in any and all activities against third parties, must be read in the light of the specific facts presented, and extensively recited by this Court, in the *Jacksonville Terminal* case.

Thus, we submit it is one thing to say that state law rights and remedies are precluded in the case of direct self-help by one party to a railway labor dispute against another or in the case of the use of self-help at jointly-owned and controlled facilities participated in by one of

the parties to the dispute. It is quite another to say that states are without power—in the absence of any Federal statute providing or denying a remedy—to apply state law, designed generally for the protection of the property of their citizens, to limit the use of self-help weapons against a third party rail carrier at a yard on its own line simply because certain cars which are deemed by the union to be “hot” cars are handled at that yard.

Accordingly, even if it were somehow appropriate—despite Section 2283 and the *Richman Brothers* decision construing it—for the District Court to pass on the question whether there was a substantive basis for the state court injunction given this Court's decision in *Jacksonville Terminal*, the answer is that the state court did have a substantial basis for distinguishing the cases. While we submit that the difference in the facts recited above establishes a difference in legal treatment, certainly the question is substantial enough to forbid the District Court from engrafting another exception upon Section 2283 by short-circuiting the normal appellate review procedures with respect to the state court's order.

D. If the Jacksonville Terminal Decision is Applicable to the Facts Presented by the Picketing at Moncrief Yard Here, that Decision Should Be Overruled

We have contended that the present proceeding is no place to adjudicate the question whether this Court's decision in *Jacksonville Terminal* is governing with respect to the picketing at the Moncrief Yard. Our position is that that determination is one for the state courts in the first instance—including the state appellate courts, to which the BLE has full access if it cares to use it—and then for this Court upon certiorari. However, as set forth in part C, above, if this suit is an appropriate place to make

that determination, we urge that the Florida Circuit Court was correct in holding that the cases as to the Terminal and as to Moncrief Yard were distinguishable. If the Court does not agree with us that Section 2283 bars the use of a proceeding in the Federal district court to determine the applicability of the *Jacksonville Terminal* decision to this case, and if the Court views the language at the close of the opinion in *Jacksonville Terminal*: "Hence, until Congress acts, picketing—whether characterized as primary or secondary—must be deemed conduct protected against state proscription" (394 U.S., at 393), to be a general proposition applicable without limit, we would urge this Court to overrule that decision.¹—Of course, this Court need not reach this question if it agrees with us that the anti-injunction statute bars the interposition of the preemption defense by way of injunction against the state court proceedings.

The Court in *Jacksonville Terminal* was narrowly divided, and the four to three majority candidly announced that its result did not amount to a "really satisfactory judicial solution to the problem at hand." (394 U.S., at 392) We submit that it is among the least satisfactory of the solutions.

In the first place, the holding in *Jacksonville Terminal*, to the effect that the state courts may not apply state law to curb secondary picketing by railway labor unions against neutral third party carriers, amounts to a preemption of state law even though there is no governing Federal statute; even though there is no Federal administrative agency whose regulatory regime must be saved from interference by the state courts; and, finally, even

¹ We reserved this question in our petition for certiorari, p. 32, n. 16.

though this Court declines to create a Federal common law, based upon statutory analogy, to fill the void.

The Court's approach in *Jacksonville Terminal* violates what the Court on previous occasions had held to be the fundamental principle derived from its decisions:

"... , [F]ederal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963).

Indeed, the modern approach of this Court is that interstitial regulation by the states of interstate commerce and of interstate carriers is permissible where the specific subject matter is not taken in hand by a generally applicable Federal statute, or by a Federal administrative regime. See *Brotherhood of Locomotive Firemen & Enginemen v. Chicago, R. I. & P. R. Co.*, 393 U.S. 129, 144 (1968); *Colorado Anti-Discrimination Commission v. Continental Air Lines, Inc.*, 372 U.S. 714, 722-25 (1963); *California v. Zook*, 336 U.S. 725, 728 (1949); *Rice v. Chicago Board of Trade*, 331 U.S. 247, 255 (1947); *Parker v. Brown*, 317 U.S. 341, 368 (1943). Thus, Federal law should not be held to supersede state law "unless that was the clear and manifest purpose of Congress." *Florida Lime & Avocado Growers, Inc. v. Paul*, *supra*, 373 U.S., at 146, quoting from *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

While in industrial disputes generally, state law regulating secondary boycotts has generally been held to be pre-empted by the Labor Management Relations Act, the decisions of this Court make it plain that the basic reason is the avoidance of collision between the state courts and

the administrative regime of the NLRB. See *Garner v. Teamsters Local 776*, 346 U.S. 485, 490-91 (1953); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 242, 244-45 (1959); *Liner v. Jafco, Inc.*, 375 U.S. 301, 306-07 (1964); *Vaca v. Sipes*, 386 U.S. 171, 180-81 (1967). But as this Court has held in the *Jacksonville Terminal* case (394 U.S., at 375-77), there is no Federal administrative jurisdiction to deal with the question raised by the application of secondary pressure to neutral rail carriers by the disputants in a Railway Labor Act dispute. Thus there is no possibility of a collision of regimes.

Nor is the railway secondary boycott taken in hand and protected by Federal statute. As this Court also indicated in *Jacksonville Terminal*, there is no affirmative sanction in the Railway Labor Act for any specific form of self-help by a party to a Railway Labor dispute, let alone the exercise of self-help weapons against neutral rail carriers. (394 U.S., at 380) While some right of self-help might be deemed to be implicit in the statutory scheme, the question posed is ~~not whether~~ a state may prevent the parties to a railway labor dispute from exercising any self-help weapons, but whether a state may confine the use of those weapons to the immediate parties to the dispute.

Not only is there no express Federal statute which begins to indicate that the policy of Congress is that the states may not do so, but there have been repeated enactments by Congress indicating that the secondary boycott in American industry generally is contrary to Congressional policy. Indeed, it appears that this policy is as old as the original Section 20 of the Clayton Act. See the discussion at 51 Cong. Rec. 9652, 9653, 9658 (1914), indicating that that provision was not intended to legalize the secondary boycott. In any event, in the Labor Management Relations

Act of 1947, Congress firmly set the national labor policy against secondary boycotts. See Section 8(b)(4)(A) of the Act, as explained in *Local 1976, United Brotherhood of Carpenters v. NLRB*, 357 U.S. 93, 100 (1958). As Senator Taft said on the floor of Congress:

"In this bill we prohibit secondary boycotts all over this country." 93 Cong. Rec. 7537 (1947)

The legislative history is clear that the only reason why the practice was not outlawed on the railroads was that the railroads had been governed by the Railway Labor Act and there had never been any history of secondary boycotts on the railroads. See the remarks of Senator Taft at 93 Cong. Rec. 6498 (1947). Indeed, in 1959, in the Landrum-Griffin Act, Congress plugged a further loophole by allowing railroads to seek relief under the Labor Management Relations Act against unlawful secondary picketing by *non-rail* employees. Section 704, Pub. L. 86-257, 73 Stat. 542. See *NLRB v. Servette, Inc.*, 377 U.S. 46, 51-52 (1964); *United Steelworkers v. NLRB*, 376 U.S. 492, 500-01 (1964).

Thus, there is no evidence that Congress views the application of secondary pressures against neutral businessmen as an important national economic goal to be fostered. Congress, rather, has repeatedly set the face of Federal legislation against any such practice. "[I]t was the clear and unequivocal intention of Congress in 1947 to outlaw the evils of secondary boycotts" (105 Cong. Rec. 15531 (1959) (remarks of Representative Griffin)) If anything, Congress has been more restrictive in dealing with the self-help rights of railway workers than in less essential industries; this is implicit in the whole structure of the Railway Labor Act which imposes lengthy procedures before any rights of self-help at all mature, and which denies self-

help altogether as to certain matters. See *Jacksonville Terminal*, *supra*, 394 U.S., at 378; *Railway Clerks v. Florida E. C. R. Co.*, 384 U.S. 238, 246 (1966); *Detroit & T. S. L. R. Co. v. United Transportation Union*, No. 29, O.T. 1969, decided December 9, 1969, 38 U.S.L.W., at 4035. It accordingly is without foundation to assume that there is any Congressional sanction whatsoever for the use of secondary boycotts against neutral rail carriers in railway labor disputes.

Prior to the *Jacksonville Terminal* decision, the Railway Labor Act had been held to supersede state law only when enforcement of the state law would conflict with an express provision of the Federal Act. See *California v. Taylor*, 353 U.S. 553 (1957); *Cf. Missouri Pac. R. Co. v. Norwood*, 283 U.S. 249, 258 (1931); *Terminal R. Ass'n v. Brotherhood of Railroad Trainmen*, 318 U.S. 1 (1943). Not only would application of state law here not conflict with any express provision of the Act, but it would not conflict with any provision of Federal decisional law, this Court having expressly refused in the *Jacksonville Terminal* case to lay down any rules, derived from statutory analogies or otherwise, as to what secondary pressures on neutral rail carriers should be held unlawful as a matter of Federal law. 394 U.S., at 390-92.

Thus, the case is of a nature, under the usual rules—there being no paramount Federal statute designed to protect the conduct, nor any Federal administrative regime designed to regulate it—where state law would be permitted to function. While the danger of inconsistent regulation by the states exists as a theoretical matter and was referred to by this Court in *Jacksonville Terminal* (394 U.S., at 381), if the problem is properly conceived of not as to whether the states may prohibit any form of self-help, but as

to whether they may curb the use of self-help weapons applied directly against neutral employees, the danger of inconsistent regulation as a practical matter is minimized. The use of the secondary boycott has had scant support as a proper means of conducting labor management relations in the past two decades. Not only have a series of Congressional enactments been aimed at it, but prohibition of it has been the consistent course of legislation and adjudication in the states.² Moreover, inconsistency of state regulation, under the modern decisions of this Court, has been held a basis for invalidating state regulation of interstate carriers only where the inconsistency itself imposes a burden on interstate commerce. See *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 526-30 (1959); *Southern Pac. Co. v. Arizona*, 325 U.S. 761, 779-84 (1945). Here, if Florida were to outlaw secondary picketing of neutral rail carriers' rail yards and other states were to permit it, the inconsistency would not impose a burden on interstate commerce. The closing of the regulatory gap revealed by the *Jacksonville Terminal* case can hardly be called a subject where the "needs of the subject matter manifestly call for uniformity." *Machinists v. Central Air Lines, Inc.*, 372 U.S. 682, 691-92 (1963). Should the possibility of inconsistent state regulation become more than theoretical, Congress could of course always act.

Thus, neither any affirmative Federal policy, Federal administrative regime, or real danger of embarrassing

² See, e.g., Ariz. Rev. Stat. § 23-1323; Colo. Rev. Stat. § 80-4-6(2)(h); Haw. Rev. Stat. § 377-7(7); Idaho Code § 44-801; Iowa Code Ann. § 736B.1; Kan. Stat. Ann. § 44-809(a); Mass. Gen. Laws Ann., Chapter 149 § 20C(f); Minn. Stat. Ann. § 179.43; Neb. Rev. Stat. § 48-903; N.D. Code § 34-12-03(2)(e); *W. E. Anderson Sons Co. v. Local Union No. 311*, 156 Ohio 541, 104 N.E.2d 22 (1952); Ore. Rev. Stat. § 662.230; Penn. Stat. Ann., Title 43, § 211.6(2)(d); Tex. Civil Stat., Art. 5154f; Utah Code, § 34-1-8 (2)(e); Wis. Stat. Ann. § 111.06(2)(g).

inconsistent state regulation stands in the way of permitting state law to be applied to curb the use of self-help weapons against neutral rail carriers in railway labor disputes.—The main practical consequences of this Court's holding in *Jacksonville Terminal* are twofold. First, the decision puts in the hands of railway labor the power to use weapons against neutrals which are without counterpart in all of American industry. Second, the decision produces an almost unique regulatory gap. Because of this Court's holding in the Federal case involving the *Jacksonville Terminal, Atlantic Coast Line R. Co. v. Brotherhood of Railroad Trainmen*, 385 U.S. 20 (1966), it is established that the Norris-LaGuardia Act bars the Federal courts from acting. It is plain that no Federal administrative agency has jurisdiction. If the state courts may not apply state law in the case of such secondary pressures, the consequence is that there is no tribunal, judicial or administrative, Federal or state, which can curb the escalation of self-help weapons by the parties to a railway labor dispute against neutral third-party rail carriers. And this would be the conclusion despite the fact that the consistent course of Federal and state legislation has been against the use of the secondary boycott.

In the light of these consequences of the holding in *Jacksonville Terminal*, and of the questionable basis for its conclusion as to the preemption of state law, we suggest that that decision should be reconsidered and overruled, if the Court reaches this point.—Of course, our basic point is that Section 2283 provides that this case is not one in which the availability of a preemption defense to the proceedings in the state court may be adjudicated at all, and we have also contended that even if it were, the *Jacksonville Terminal* decision is distinguishable.

II. THE DISTRICT COURT'S INJUNCTION HERE VIOLATED THE NORRIS-LAGUARDIA ACT

Despite the fact that the District Court and the Court of Appeals ignored the point, it appears plain that the District Court's injunction is violative of the Norris-LaGuardia Act's ban on injunctions. The District Court held that ACL's injunctive remedy against the picketing involved a case "arising out of a labor dispute" and hence fell within the Norris-LaGuardia Act's ban on injunctions. It must follow equally that the counter-injunction entered by the District Court against enforcement of the state court proceedings, which is based upon the same set of operative facts, likewise involves a case "arising out of a labor dispute." Moreover, the specifics of the injunction granted fall within the letter and the spirit of that Act.

In the first place, Section 4(d) of the Act absolutely prohibits injunctions against any person who is "aiding any person participating or interested in any labor dispute who . . . is prosecuting, any action or suit in any court . . . of any State." See Appendix A, p. 1a, *infra*. The briefest of references to the District Court's injunction (A. 196) makes it plain that this is precisely what the District Court has done. We submit it is untenable to argue, as respondents do (Br. Op., p. 20), that Section 4(d) prohibits an injunction against persons aiding the ACL in its attempts to obtain a state court remedy but does not prevent an injunction against the prosecution of that state court remedy. Moreover, on its face, the District Court's injunction prohibits not only the enforcement of state court remedies but collective and concerted action in enforcement of them. (A. 196)

Secondly, Section 7 of that Act makes it plain that no Federal court has power to issue *any* injunction "in any

case involving or growing out of a labor dispute" except upon strict compliance with certain procedures and the making of certain findings, including a finding, certainly pertinent here, "[t]hat complainant has no adequate remedy at law." Clearly the availability of the normal appellate remedies to the BLE in the Florida state courts and in this Court would preclude the making of any such finding; and, indeed, there was not even any pretense in the District Court of making *any* findings in accordance with Section 7 of the Act. The BLE has contended that Section 7 is not applicable here because the conduct enjoined by the District Court was not conduct of a sort protected against injunction by Section 4 of the Act. (Br. Op., p. 20) This contention is erroneous. In the first place, the two sections are independent prohibitions; an injunction is barred if it violates either of them. *Local 205, United Electrical Workers v. General Elec. Co.*, 233 F.2d 85, 90 (1st Cir. 1956), *aff'd on other grounds*, 353 U.S. 547 (1957); *Park v. International Brotherhood of Electrical Workers*, 314 F.2d 886, 919 (4th Cir. 1963), *cert. denied*, 372 U.S. 976 (1963). *Cf. Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 458 (1957). In the second place, as we have indicated above, Section 4(d) was in fact violated by the injunction.

The only argument that appears to be seriously made against the applicability of the Norris-LaGuardia Act here appears to be the general argument that the Norris-LaGuardia Act does not apply to injunctions against management as opposed to those against labor. (Br. Op., pp. 20-22) The text of the Act does not support any such proposition. Section 7 restricts *all* injunctions in cases "involving or growing out of a labor dispute." One of the specific items of conduct protected against injunction by Section 4 is conduct of which only management is capable—becoming a member of an "employer organization." Section 4(b).

The only judicial support for the sweeping proposition that the Act does not apply to management is apparently a dictum in *Brotherhood of Locomotive Engineers v. Baltimore & O. R. Co.*, 310 F.2d 513, 518 (7th Cir. 1962). Where this Court has upheld the grant of an injunction against management despite the Norris-LaGuardia Act, by reason of the necessity in a specific case of accommodating that Act to other statutes, it has taken pains to avoid any such sweeping proposition. See, e.g., *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 457-59 (1957).¹

The Act does not prohibit injunctions simply against labor or simply against management; it denies the courts of the United States jurisdiction, subject to certain exceptions, to issue any injunction "in any case involving or growing out of a labor dispute." While, to be sure, the occasion of the passage of the Norris-LaGuardia Act was the use, deemed excessive by the Congress, of Federal court injunctions to curb union activities, the anti-injunction provisions of the Act on their face apply equally to labor and to management, and the legislative history indicates that Congress intended the provisions to apply to injunctions against both labor and management.

The Senate Committee Report is plain enough:

"Moreover, it will be observed that this section [Sec. 6]; as do most all of the other prohibitive sections of the bill, applies both to organizations of labor and organizations of capital. The same rule throughout the bill, whenever it is applicable, applies both to employers

¹ It is worth noting that Mr. Justice Frankfurter, who was a student of the labor injunction problem prior to the passage of the Norris-LaGuardia Act, and who was intimately associated with the drafting and passage of that Act, took the view that the Act was applicable to bar injunctions against management. See *Textile Workers Union v. Lincoln Mills*, *supra*, 353 U.S. 448, 469 n. 3 (dissenting opinion).

and employees, and also to organizations of employers and employees." S. Rep. 163, 72d Cong., 1st Sess. (1932), p. 19.

In the course of his remarks explaining the bill to the Senate, Senator Norris said:

"Wherever it can be done this bill applies equally to organizations of labor and to organizations of capital. Organizations of employees and organizations of capital are treated exactly the same." 75 Cong. Rec. 4507 (1932).

"It attempts to weigh in the scales of justice all the elements which ought to be considered in passing upon controversies between labor and capital. It asks for the laboring man nothing that it does not concede to the corporation." 75 Cong. Rec. 4509 (1932).

Senator Wagner, who was also one of the major supporters of the bill, said during the course of debate:

"The policy and purpose which give meaning to the present legislation is its implicit declaration that the Government shall occupy a neutral position, lending its extraordinary power neither to those who would have labor unorganized nor to those who would organize it and limiting its action to the preservation of order and the restraint of fraud." 75 Cong. Rec. 4915 (1932).

At one point during the debate there was a discussion as to whether the anti-injunction provisions of the bill could cut both ways. Senator Steiwer, a labor advocate, argued that one fault of the bill was that it would also prevent labor from enforcing its rights. Senator Norris agreed that Senator Steiwer had raised a troublesome question, and Senator Reed said:

"I think it is only fair to give warning now that this is a 2-edged sword. . . ." 75 Cong. Rec. 4938 (1932).

The basic purpose, then, of the Act was a neutral purpose, even though the Act might have been prompted by the practice of issuance of injunctions against union conduct. That purpose was "to take the Federal courts out of the business of granting injunctions in labor disputes". *Wilson & Co. v. Birl*, 105 F.2d 948, 953 (3d Cir. 1939); see also *Marine Cooks & Stewards v. Panama S.S. Co.*, 362 U.S. 365, 372 (1960).

The more carefully reasoned lower court opinions support this view. The Court of Appeals for the First Circuit has declared: "The Norris-LaGuardia Act is not a 'one-way street' Where its terms can be read to include employer conduct, that conduct should also be protected." *Local 205, United Electrical Workers v. General Elec. Co.*, 233 F.2d 85, 93 (1st Cir. 1956), *aff'd on other grounds*, 353 U.S. 547 (1957). Other decisions in the lower Federal courts have held injunctions against management conduct barred by the Norris-LaGuardia Act. See *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F.2d 183 (4th Cir. 1948); *Newspaper Guild v. Boston Herald-Traveler Corp.*, 140 F. Supp. 759 (D. Mass. 1955). See also *Local 937, United Automobile Workers v. Royal Typewriter Co.*, 88 F. Supp. 669 (D. Conn. 1949); *Duris v. Phelps Dodge Copper Products Corp.*, 87 F. Supp. 229 (D.N.J. 1949); *United Packing House Workers v. Wilson & Co.*, 80 F. Supp. 563 (N.D. Ill. 1948).

Accordingly, if the Norris-LaGuardia Act prohibits a Federal court injunction against the picketing here (as the District Court held), it should, for the reasons stated, prohibit a Federal court injunction against the proceedings in the state court.

CONCLUSION

For the reasons stated, the judgment of the Court of Appeals should be reversed, and the case remanded to the District Court with instructions to deny the respondents' motion for an injunction against the proceedings in the Florida Circuit Court.

Respectfully submitted,

DENNIS G. LYONS

1229 Nineteenth Street, N. W.
Washington, D. C. 20036

FRANK X. FRIEDMANN, JR.

DAVID M. FOSTER

1300 Florida Title Building
Jacksonville, Florida 32202

Attorneys for Petitioner

Of Counsel:

JOHN W. WELDON

JOHN B. CHANDLER, JR.

ROGERS, TOWERS, BAILEY, JONES & GAY

JOHN S. COX

COX & WEBB

Jacksonville, Florida

DOUGLAS G. ROBINSON

ARNOLD & PORTER

Washington, D. C.

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APPENDIX A**The Norris-LaGuardia Act**

The text of Sections 4, 7 and 13 of the Norris-LaGuardia Act, 47 Stat. 70, (1932), 29 U.S.C. §§ 104, 107 and 103 is as follows:

"SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising,

speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

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"Sec. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That substantial and irreparable injury to complainant's property will follow;

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"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

"Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient; if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's

fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

"The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice; the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

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"SEC. 13. When used in this Act, and for the purposes of this Act—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined)

of 'persons participating or interested' therein (as herein-after defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia."

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19. [illegible]

in the
Supreme Court
of the
United States

October Term, 1969

CASE No. 477

ATLANTIC COAST LINE RAILROAD COMPANY,
Petitioner,

vs.

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
ET AL.,**
Respondents.

**On Writ of Certiorari To The
United States Court of Appeals
For The Fifth Circuit**

BRIEF FOR RESPONDENTS

**COUNTERSTATEMENT OF QUESTIONS
PRESENTED**

1. Where a Federal District Court has been the forum for seven years of litigation involving a uniquely complex dispute under the Railway Labor Act, and has assumed jurisdiction in and has pending before it, cases:

a) administering the self-help exceptions to collective bargaining agreements "reasonably necessary" to the carrier party to the dispute;

b) ordering the carrier party to bargain in good faith with its labor organizations;

c) purportedly "mandating" the connecting carriers to perform interchange with the struck carrier;

d) determining the effect of this purported "mandate" as applied to striking employees and employees of the connecting carriers; and,

e) finding the self-help picketing activities of the respondents to be lawful and protected under controlling Federal law;

may the Federal District Court "in aid of its jurisdiction" and "to protect or effectuate its judgments", under 28 U.S.C. §2283, enjoin the enforcement of a state court injunction proscribing respondents' identical self-help picketing activities based solely upon inapplicable state law, which the District Court has concluded would infringe upon its jurisdiction and nullify its prior orders and delineation of rights of the parties?

2. Were the self-help picketing activities of respondents within the scope of "conduct protected from state proscription", as determined in this Court's decision in *Brotherhood of R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 393 (1969)? And if determined to be so, should that decision be summarily overruled?

3. Under the circumstances presented in Question 1, does the Norris-LaGuardia Act operate to prohibit the District Court from enjoining state proceedings "in aid of its jurisdiction" and "to protect or effectuate its judgments"?

STATEMENT

This case presents yet another episode in that most extraordinary chapter of American labor-management relations — the Florida East Coast Railway strikes. As the dispute formally enters its *eighth* year for the FEC's Non-operating employees, its *fifth* year for trainmen, conductors and hostlers, and its *fourth* year for engineers, whose union the Brotherhood of Locomotive Engineers (BLE) is, the sole union respondent in the present case, it is important to recognize that the present case, although bearing a separate court file number and concerned with one aspect of the legal situation with regard to the FEC is merely one of a number of suits involving the FEC disputes currently pending in the District Court for the Middle District of Florida, Jacksonville Division.¹ These cases have occupied and continue to occupy that Court's attention, the attention of the Court of Appeals for the Fifth Circuit, and this Court, as they have for years. This case

¹E.g., *Florida East Coast R. Co. v. Jacksonville Terminal Co.*, et al., U.S.D.C. M.D. Fla., No. 63-16-Civ-J, Preliminary Injunction entered January 30, 1963; *United States v. Florida E. C. Ry. Co.*, Case No. 64-107-Civ-J, U.S.D.C. M.D. Fla. Preliminary Injunction entered October 30, 1964, *aff'd*, 348 F.2d 682 (5th Cir. 1965); *aff'd sub nom. Brhd. of Ry. & S. S. Clerks v. Florida E. C. Ry. Co.*, 384 U.S. 238 (1966); *Mungin v. Florida E. C. Ry. Co.*, Case No. 67-764-Civ-J, U.S.D.C. M.D. Fla., Order, April 15, 1968, *reversed*, 416 F.2d 1169 (5th Cir. 1969), Orders entered by Mr. Justice Brennan extending time to file Petition for Certiorari, December 29, 1969 and January 19, 1970; *Brotherhood of Locomotive Engineers, et al., v. Atlantic C. L. R. Co., et al.* Case No. 65-352-Civ-J., U.S.D.C. M.D. Fla.

did not arise in a vacuum but in the context of the total legal situation which has been created by the decisions of this Court in *Brotherhood of Ry. and S.S. Clerks v. Florida E. C. Ry. Co.*, 384 U.S. 238 (1966) and *Atlantic C.L.R. Co. v. Brhd. of Railroad Trainmen*, 385 U.S. 20 (1966) affirming, 362 F.2d 649 (5th Cir. 1966) together with this Court's decision late in the last term *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969), and of course, the additional decisions of the Court of Appeals and District Court.

Background — The initial decision of this Court in *Brhd. of Ry. and S.S. Clerks v. Florida E.C. Ry. Co.*, 384 U.S. 238 (1966) relates the early history of the FEC dispute which began as a strike by the FEC's non-operating employees in January, 1963. Since the mandate of this Court came down in the *Clerks* decision in May of 1966, that case has remained pending in the District Court for the Middle District of Florida, upon the issues of the self-help exceptions to collective bargaining agreements "reasonably necessary" to continue FEC's operations; of FEC's repeated contumacy²; of the relief necessary to restore and recreate the status quo required by the Railway Labor Act, *Detroit & T.S.L. R.R. Co. v. United Transp. U.*, ____ U.S. ____, 90 S.Ct. 294 (1969), and of the issuance of a permanent injunction against future violations of the Railway Labor Act by FEC. Hearings were held in this case as recently as January 13, 1970, and a "Final Hearing" has been set to commence on April 6, 1970, to continue throughout April and May if necessary. The District Court's in-

²The most recent finding of FEC contempt was by Order dated September 23, 1968. Additional Orders to Show Cause were issued by the District Court on October 8, 1968, and March 14, 1968, relating to FEC bad-faith bargaining and massive subcontracting of work in violation of the Court's injunction.

junction which was affirmed by this Court in its *Clerks* decision, specifically included a mandatory requirement that the FEC "bargain in good faith with the labor organizations representing the crafts or classes of FEC employees". (Supreme Court Record, Vol. I, p. 191, *Brotherhood of Ry. and S.S. Clerks v. Florida E.C. Ry. Co.*, supra; this injunction is also reproduced in the Court of Appeals for the Fifth Circuit's latest opinion dealing with the FEC disputes, *Mungin et al. v. Florida E.C. Ry. Co.*, 416 F.2d 1169, 1172-73 fn. 16 (5th Cir. 1969).) We point this out to bring to the Court's attention the fact that the two Federal District Judges in the Middle District of Florida, Jacksonville Division, Judges Charles R. Scott and William A. McRae, Jr., have undertaken to and virtually monthly administer what have been described by Chief Judge Brown of the Court of Appeals for the Fifth Circuit as their "railroad duties", *Mungin v. FEC*, 416 F.2d at 1174, in connection with the supervision of self-help engendered by the FEC disputes.

Since the earliest days of the dispute, when FEC resumed its operations³ using striker replacement crews, the employees have sought to bring their economic power to bear on the actual location where FEC receives and delivers freight with its connecting carriers, the points of interchange.

These efforts of the striking unions to picket the points of interchange, where FEC trains daily operate to receive and deliver the freight traffic which enables it to operate unimpeded in the face of continuing lawful strikes, have

³Such operations were, of course, in violation of the Railway Labor Act until the FEC was enjoined prospectively almost two years later.

each spawned prolific litigation. The FEC operates primarily in a stright north-south line along the east coast of the State of Florida. At the FEC's southern terminus where it interchanges freight with the Broward County Port Authority,⁴ and at its northern terminus in Jacksonville where FEC interchanged freight on the premises of the Jacksonville Terminal Company with the Seaboard Air Line Railroad (SAL), and Southern Railway, and on the premises of the Moncrief Yard where FEC interchange was performed with the Petitioner, Atlantic Coast Line Railroad Co. (ACL), picketing at each interchange point has involved its own lengthy injunctive proceeding.

In each instance, with the exception of the Federal District Court in the present case, the trial courts both federal and state, issued injunctions which were only reversed after years of appeals through the state and federal appellate courts. Picketing of the interchange carried out on the premises of the Jacksonville Terminal Company was, of course, three times before this Court.⁵

The decision of this Court late in the last term *Brotherhood of R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969), in which certiorari was granted "to determine the extent of state power to regulate the economic combat of parties subject to the Railway Labor Act," 394 U.S. at 372, should, we submit, have written an end to the Florida state courts granting of injunctions based

⁴See, *Brotherhood of Locomotive Firemen & Enginemen v. Florida East Coast R. Co.*, 346 F.2d 673 (CA 5 1965).

⁵*Atlantic C. L. Ry. Co. v. Brhd. of Railroad Trainmen*, 385 U.S. 20, (1966) *affing* 362 F.2d 649 (CA 5 1966); *Brhd. of Railroad Trainmen v. Jacksonville Terminal Co.*, certiorari denied, 385 U.S. 935 (1966); *Brhd. of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969).

upon Florida state law against picketing by parties whose disputes have run the gamut of the Railway Labor Act's procedures. By reason of the recalcitrance of the Florida state courts, however; this was not to be.

In this case the Federal District Court having assumed jurisdiction and having entered Orders concerning the FEC disputes in a myriad of cases, specifically requiring good faith bargaining on the part of FEC, having entered an order purportedly requiring the ACL and other connecting carriers to perform interchange, having assumed jurisdiction in a case filed by the unions to construe this order,⁶ and having entered an order in the present case specifically finding that the picketing carried on by the respondent union at ACL's Moncrief Yard is lawful and protected under Federal law, has found it necessary

⁶Interestingly, the petitioner asserts that ACL-FEC interchange is "mandated by an existing Federal Court injunction", (Pet. Br. p. 46) citing *Florida East Coast R. Co. v. Jacksonville Terminal Co., et al.*, U.S.D.C., M.D., Fla., No. 63-16-Civ-J, Order of January 30, 1963. This injunctive order obtained by the FEC within the first week of the strike is a topic of discussion in the opinion of the Fifth Circuit Court of Appeals in *Brhd. of R. Trainmen v. Atlantic Coast Line R. Co.*, 362 F.2d 649, 651 (5th Cir. 1966), *aff'd*, 385 U.S. 20 (1966). As the Court of Appeals points out the aggrieved unions were not permitted to intervene in that case, and the carrier parties are apparently eager to have the District Court's order, purportedly "mandating" interchange stand. This injunctive order also appeared in the Record before this Court in *Brhd. of R. Trainmen v. Jacksonville Terminal Co.*, *supra*, Case No. 69, O.T. 1968, Appendix pp. 36-46.

This interesting case is simply another seam in the web of ongoing litigation in the District Court, demonstrating further that that Court has plenary jurisdiction over the FEC dispute, the self-help of the parties, and the interchange which is the subject of this case. In another case currently pending in the District Court, *Brhd. of Locomotive Engineers, et al. v. Atlantic C. L. R. Co., et al.*, Case No. 65-352-Civ-J, the unions are seeking declaratory relief as to the effect of the injunction entered in Case No. 63-16, and the Court has assumed jurisdiction of the case, although no decision has yet been rendered in the proceeding.

and essential to enjoin the enforcement of a subsequent state court temporary injunction, which prohibits the picketing under Florida state law, in order to protect and effectuate the Federal court's orders and in aid of the Federal court's jurisdiction.

The Jacksonville Terminal Picketing — In May, 1966, the picketing out of which the *Jacksonville Terminal* cases arose transpired at the premises of the Jacksonville Terminal Company. As noted in the opinion of this Court, the unions there involved, upon the FEC instituting its unilateral revision of rules, rates of pay and working conditions applicable to their crafts, "responded by calling a strike and thereafter by picketing the various locations at which FEC carried on its operations, including the premises of the respondent, Jacksonville Terminal Company." 394 U.S. at 371. As further noted by the Court, "FEC carries on substantial daily operations at the terminal, interchanging freight cars with the other railroads; it accounts for approximately 30% of all interchanges on the premises." 394 U.S. at 373.

While the *Jacksonville Terminal* litigation wound its slow way through the Florida appellate courts to this Court, on March 12, 1967 the last operating craft union which maintained "regular" contractual rights with the FEC, respondent Brotherhood of Locomotive Engineers (BLE), called a strike of its members against FEC in response to the FEC's identical unilateral revision of the rules, rates of pay and working conditions, this time applicable to locomotive engineers. This dispute had been fully processed through the procedures of the Railway Labor Act, and the FEC had declined binding arbitration, which BLE had accepted. (A. 58, 154-55)

Following the commencement of the strike, on April 23, 1967 while the state court injunction ultimately reversed by this Court was still in effect prohibiting picketing of the Jacksonville Terminal Co., BLE began to picket the employee entrance to the Moncrief Yard where all FEC interchange with the ACL daily takes place.

The Moncrief Yard Picketing — Whatever else may be said of the Moncrief Yard it obviously cannot be denied by petitioner that it is a regular daily situs of actual operations of FEC engines and trains operated by striker replacement crews. By agreement between the ACL and FEC certain designated tracks of ACL's Moncrief Yard are used as the interchange situs of *all interchange operations* between the two carriers. (A. 33-4, 38, 110). This is in contrast to the interchange operations conducted between FEC and the other two rail carriers with which it connected in the Jacksonville area at the time of the picketing, the Seaboard Air Line Railroad (SAL) and the Southern Railway Co. (Southern). As to these two carriers all interchange operations were carried on on the premises of the Jacksonville Terminal Company, (A. 59-60) and it is this interchange which was the subject of the 1966 picketing by the FEC's striking trainmen. As previously noted by this Court FEC interchange on the premises of the Terminal Company amounted to 30% of all interchange carried on there, and this amount represented approximately 40% of the total FEC interchange traffic. (A. 61) The remaining 60% of FEC interchange traffic was performed on the premises of the Moncrief Yard. (A. 61) This interchange traffic accounted for approximately 25% of the total number of cars handled in the Moncrief Yard by the ACL's estimate. (A. 121) FEC interchange in the Moncrief Yard was thus roughly equivalent to the FEC

interchange in the Terminal Company as a percentage of the total amount of traffic handled within each facility but the Moncrief interchange, was in fact much greater as a percentage of FEC's total traffic, i.e., 60%, as compared to 40% within the Terminal Company. In accordance with this arrangement, ACL makes payments to the FEC in an agreed amount for the FEC's extra services in making its pick up and deliveries of freight cars on the premises of the ACL, rather than upon the jointly owned premises of the Jacksonville Terminal Company. (A. 127) ACL and its employees, of course, perform all track maintenance and whatever additional maintenance is required in order to keep the designated interchange tracks serviceable. (A. 54)

With the merger of the Atlantic Coast Line Railroad Co. and the Seaboard Air Line Railroad Co. into the Seaboard Coast Line Railroad Co. (SCL), see, *Florida E. C. Ry. Co. v. United States*, 386 U.S. 544 (1967), *aff'g*, 259 F.Supp. 993, which, of course, presently owns the Moncrief Yard, *all* interchange between FEC and SCL could today be performed in the Moncrief Yard thus virtually completely negating the effect of picketing at the Jacksonville Terminal Co. The FEC and SCL simply by shifting all interchange from the Terminal company into the yard of the non-struck carrier could thereby insulate this vital part of the struck carrier's operations from the effects of lawful self-help.⁷

⁷This quite obviously is the reason why no picketing has been instituted at the Jacksonville Terminal Co. even though this Court has determined that such picketing is lawful and protected self-help. Contrary to petitioner's assertions, respondent has no desire to "escalate" (Pet. Br. p. 50) the FEC dispute beyond the actual situs of FEC's interchange operations.⁸ If these can be halted there would be no reason, and respondents have disavowed any interest, (A. 27, 62, 137) in affecting any other rail movements.

On March 11 and 12, 1967, just prior to and on the day the BLE strike against FEC commenced, respondent J. D. Sims, the BLE official in charge of the strike met with ACL officials in an attempt to work out an arrangement which would with certainty confine the effects of BLE self-help activities solely to FEC interchange traffic. (A. 138-39; 140-141). In this regard BLE made several requests, each of which would have accomplished this desired result.

A) BLE requested ACL to shift the site of its interchange operations with FEC from Moncrief Yard onto the premises of the Jacksonville Terminal Company so that no FEC engines and crews would be operating in the Moncrief Yard. ACL management refused. (A. 139).

B) BLE requested permission to place pickets within the Moncrief Yard premises in order to picket the actual FEC movements within the Yard at the places where ACL employees actually came into contact with them. (A. 139, 141). This suggestion was rejected by ACL management as " * * * just so ridiculous that I couldn't consider it." (A. 141).

On the day the strike commenced, March 12, 1969, BLE placed pickets on the public railroad crossing at McQuade Street, which is the closest public location to the boundary between Moncrief Yard and the Jacksonville Terminal Company property to the south. (A. 40, 46, 112) FEC engines operated by striker replacement crews passing the crossing in order to make their pick-ups and deliveries in Moncrief Yard were totally unaffected by this picketing, however, SAL engines with freight destined to and from FEC interchange in the Terminal Company were stopped, with supervisory personnel being used to complete the movement into the Terminal Company. (A. 59-60)

In an effort to accomplish the desired goal of halting FEC's day to day operations carried out on the premises of the Moncrief Yard, the BLE on April 23, 1967, commenced the limited peaceful picketing and pamphleteering which is the subject matter of the present case. In marked contrast to the picketing which had been carried on in 1966 by the trainmen at the Jacksonville Terminal premises, neither the picket signs nor pamphlets requested ACL employees not to cross the line or to refuse to report to work. (A. 27, 32) The pickets were posted on public property outside the sole road entrance to the Moncrief Yard which was the only place where the pickets could contact the operating employees of ACL who were performing the interchange pick ups from and deliveries to the FEC within the confines of the Yard. (A. 94). ACL employees were requested to refuse to move "solid blocks" of FEC interchange, either on pick-up or delivery. (A. 61-62)

The actual effect of the picketing as portrayed in the Brief for Petitioner pp. 10-12, can only be called exaggerated. The picketing went on for a total of five days until a "truce" was arranged on Friday morning, April 28, 1967, pending the outcome of the state court proceedings. (A. 108). During this period of time, as fully catalogued in the state court testimony of M. C. Jennette, General Superintendant of Terminals for ACL (A. 94-102) a total of 16 "incidents" occurred involving 32 ACL employees. The first 13 "incidents" over the period from April 23-27, 1967, involved ACL operating personnel who refused to either make deliveries to or pick ups from the FEC interchange tracks. Upon their refusal to do so the ACL would "relieve" the individuals from duty until further notice, not permitting them to do any other work or return to work on the following days (A. 36, 108). During the final

morning of the picketing incidents involving two jobs occurred, in which individuals did refuse to switch a total of twelve cars destined for FEC from two cuts which contained other than FEC traffic. (A. 98-99). As to these movements supervisory personnel switched out the FEC destined cars. (A. 98). In one instance the employees were permitted to continue switching non-FEC destined cars, and in the other they were "relieved". (A. 98).

Finally, just a few hours before the "truce" which ended the picketing was effected on Friday, April 28, 1967, one road crew refused to man an outgoing train which contained cars received from FEC. (A. 101). The train departed 32 minutes late. (A. 117).

This one late road train, together with the ACL's estimate that it was, "approximately 12 or 16 hours behind with our terminal switching due to the congestion in the yard at the time this truce was called," (A. 119) was the total practical effect on ACL's Moncrief Yard operations of 5 days of the picketing involved herein. The claimed disastrous consequences of the picketing with which Petitioner's Brief (pp. 10-12) is replete, are simply not borne out by the record as to what actually occurred in the Yard.

Moreover, the so-called "Hot Car Program" (a slogan coined by the petitioner) has reference in fact solely to the two "incidents" involving 12 FEC destined cars on cuts which contained mixed FEC and non-FEC destined freight, and the one 32 minute late road train. (A. 98-99, 117) These individual instances occurring just prior to the cessation of activities on April 28, 1967, apparently were attributable to over-zealousness or misunderstanding on the part of individual ACL employees.

Obviously it was not the "avowed purpose" (Pet. Br. p. 12) of the respondents to close down the Moncrief Yard, as this result, had it been the purpose of the picketing could have been far more easily accomplished by the establishment of picket lines requesting employees not to cross as had been done at the Jacksonville Terminal Company. The purpose of the picketing as expressed by the responsible BLE officer was to stop only the FEC traffic (A. 62, 137).³ Since all of the interchange movements performed by ACL operating personnel were done within the premises of the Moncrief Yard, the only place where the FEC picketing engineers could appeal to them was where they came to work at the Yard, and the only times of such appeals were during the crew changes at the Yard. (A. 31-2, 94). The futility of addressing such appeals to the FEC striker replacement crews as they with their trains entered Moncrief Yard across the McQuade Street crossing is obvious.

The Federal Court Picketing Case — This case was commenced by ACL on April 25, 1967, by the filing of a Complaint (A. 7-24) in the United States District Court for the Middle District of Florida, seeking an injunction combined with a specific prayer for general relief (A. 17, 20, 23), which under Rule 54(c), Federal Rules of Civil Procedure, of course, includes a claim for money damages, *Mungin v. Florida East Coast Ry. Co.*, 416 F.2d 1169, 1175 (5th Cir. 1969), as a result of the picketing activities of respondents at Moncrief Yard. The picketing was alleged to be in violation of the Railway Labor Act, 45 U.S.C. §151 et seq., and the Interstate Commerce Act, 49 U.S.C. §1

³The fact that stopping FEC traffic was the only purpose of the picketing was confirmed by ACL Terminal Superintendent Jennette:

"Q You understood, did you not that the purpose of this activity was only to stop FEC traffic?

A. That was my understanding; yes, sir." (A. 109)

et seq. The jurisdiction of the Court was specifically invoked by the plaintiff ACL, under 28 U.S.C. §§ 1331 and 1337.

The plaintiff's Motion for a Preliminary Injunction was brought on for hearing on the same day, and a full evidentiary hearing was held by the Court including the testimony of five ACL officials and of the BLE officer in charge of picketing (A. 25-63). The testimony of the ACL officials showed that FEC engines and crews daily operate across the tracks of the Jacksonville Terminal Company and onto the tracks of the Moncrief Yard where they deliver freight to and pick up freight from the ACL. In the words of L. T. Andrews, ACL General Manager:

"The use of the Moncrief Yard tracks for interchange purposes, on the basis of the present day operations, is a part of the FEC operation."

* * *

"Q. And if they did not use it everyday they wouldn't get any freight from ACL?

A. Not under the basis of the present operating conditions." (A 55-56)

On the basis of the evidence presented, the District Court on the following day, April 26, 1967, entered its Order denying the application of the ACL for temporary injunctive relief. (A. 64-68).

Although ACL repeatedly in its Brief (pp. 2, 12, 13, 19, 20, 35-40) characterizes this Order as simply involving a finding by the District Court that it was precluded by the Norris-LaGuardia Act, 29 U.S.C. §101 et seq., from

granting injunctive relief, examination of the five-page Order demonstrates that it was, in fact, as the District Judge himself later characterized it, a "delineation of rights of the parties" (A. 196) under controlling federal law, including Section 20 of the Clayton Act, 29 U.S.C. §52 (A. 67).

In this Order the District Court held that it had jurisdiction of the case under 28 U.S.C. §1337. (A. 66). The Court further specifically dealt with the ACL's contention that the respondents' picketing was in violation of the Railway Labor Act (A. 67) and rejected that contention.

Finally the Court held that in addition to the Norris-LaGuardia Act, Section 20 of the Clayton Act, 29 U.S.C. §52, was applicable to the conduct of the respondents. (A. 67). This section of the Clayton Act provides that the conduct specified within its terms which includes " * * * ceasing to perform any work or labor, or * * * recommending, advising, or persuading others by peaceful means so to do," and "peacefully persuading any person to work or abstain from working," shall not " * * * be considered or held to be violations of any law of the United States." 29 U.S.C. §52. *United States v. Hutcheson*, 312 U.S. 219 (1941).

In light of this finding, there can be no question that the District Court, as it later expressly stated, Order, June 19, 1969, (A. 196) delineated the rights of the parties to the case which was properly before the Court. No appeal was taken from this Order by ACL.

The State Court Injunction — Immediately following the entry of the April 26, 1967 Order by the Federal District Court, the ACL filed another Complaint in the

Circuit Court for the Fourth Judicial Circuit in and for Duval County, Florida, against respondents, seeking an injunction based upon state law against respondents' identical picketing activities. (A. 77-89)

As soon as the state court case was filed, respondents filed a removal petition in the Federal District Court. (A. 69-71) Since the facts alleged were, of course, identical with the facts from which the District Court had just found that it possessed federal question subject matter jurisdiction BLE urged the District Court to retain jurisdiction of the State Court case. Upon ACL's motion to remand (A. 72-73), however, the District Court entered its first directly non reviewable order of remand (A. 74) citing only a section of Moore's Federal Practice⁹ which contained the conventional wisdom prevailing prior to this Court's decision in *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557 (1968) regarding cases in which an alleged "cause of action" based solely upon inapplicable state law appeared, ignoring the applicable federal law, and as to which the Norris LaGuardia Act, 29 U.S.C. §101 et seq. applied.

Following the Order of Remand, hearing was held before the state court judge with the same witnesses giving the same testimony as had been adduced before the Federal Court, with the addition of testimony regarding the activity subsequent to the Federal Court hearing and prior to the April 28, 1967 "truce". (A. 90-143).

The state court entered its Order for Temporary Injunction on May 3, 1967 completely enjoining respondents'

⁹IA Moore's Federal Practice, Para. 0.167(7) (2nd ed. 1965).

conduct based upon the application of Florida State law. (A. 144-151). The injunction was taken virtually verbatim from the state court's *Jacksonville Terminal Injunction*. (Compare A. 144-151, with Appendix pp. 79-82, *Brhd of R. Trainmen v. Jacksonville Terminal Co.*, Case No. 69, O.T. 1968.)

Following the entry of the state court's Temporary Injunction respondents sought again to remove the case to the Federal District Court (A. 152-54) in light of the Court of Appeals for the Sixth Circuit's decision in *Avco Corp. v. Aero Lodge No. 735*, 376 F.2d 337 (6th Cir. decided May 2, 1967). The District Court again remanded the case, in a second directly unreviewable Order (A. 157) citing no authority.

By agreement between counsel, no action was taken in the state court case while the companion litigation involving the trainmen's May, 1966 picketing of the Jacksonville Terminal Company made its way to this Court for determination of the scope of railway labor's self-help rights and the law (state, federal or both) applicable thereto.

The opinion of this Court in the companion litigation *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969) was issued on March 25, 1969 and rehearing was denied by the Court on May 5, 1969.

Following the denial of rehearing by this Court in the *Jacksonville Terminal* case, respondents moved in the state court for the dissolution of the state court injunction, (158-60) which was bottomed solely upon the application of Florida state law to respondent's picketing.

During the initial hearing in the state court on respondents' motion for dissolution, which took place on May 23, 1969, counsel for petitioner shifted their ground for upholding the state court's injunction to include a contention that the Railway Labor Act, 45 U.S.C. §151 et seq., as applied in the *Jacksonville Terminal* case was unconstitutional under the United States Constitution. (A. 170, 173-4). At this juncture counsel for respondents requested and were granted a recess by the state court judge and another Petition for Removal (A. 168-171) was thereupon filed in the Federal District Court, in that it was now manifestly apparent that the state court case was not based solely upon Florida State law, and, in addition, this Court's intervening decisions in *Avco Corp. v. Aero Lodge, No. 735*, 390 U.S. 557 (1968), and *Jacksonville Terminal* made it clear that the case was removable without regard to the express assertions of the petitioner. At the same time respondents filed an Answer (A. 163-67) to the Complaint in the present case which remained pending in the Federal District Court.

Subsequent to the recess, counsel for petitioner announced to the State Court its withdrawal of "any arguments under the United States Constitution and announced that they waived their right to raise such arguments subsequently at either the trial or appellate level * * *." (A. 174). Petitioner also claimed that its "waiver" of constitutional argument was prior in time to the filing of the Removal Petition. (A. 174). For the third time in the case, after hearing, however, the District Court entered its directly unreviewable Order of Remand on May 28, 1969 (A. 175) again citing no authority.

Following remand a second hearing was held on May 29, 1969 before the state court judge on the Motion to Dissolve the injunction. At this hearing the state court judge openly revealed his recalcitrance. (See, colloquy between Court and counsel quoted, *infra*, at page 35). In a remarkable "Letter Opinion" (A.181-82), the judge announced his intention to continue his injunction based upon Florida state law, "distinguishing" away the *Jacksonville Terminal* decision of this Court in the face of what even he termed the "final conclusion" of this Court. (A. 181)

Presented with this display of complete recalcitrance on the part of the state court, respondents then filed a Motion for Preliminary Injunction in the pending Federal District Court picketing action against the Petitioner's enforcement of the state court injunction, which clearly flouted and nullified the previously entered Order of the District Court of April 26, 1967, and impinged upon and violated the jurisdiction of the District Court to finally determine the rights of the parties to the case then pending before it under controlling federal law, which seriously interfered with the District Court's jurisdiction to enforce its bargaining orders entered in *United States v. Florida E.C. Ry. Co.*, *supra*, together with its jurisdiction assumed in *Florida E.C. Ry. Co. v. Jacksonville Terminal Co. et al.*, Case No. 63-16-Civ-J, U.S.D.C., M.D., Fla., where it had entered an injunction which purportedly "mandated" (Pet. Br. p. 46) FEC-ACL interchange, and the jurisdiction assumed in the pending case of *Brhd. of Locomotive Engineers et al. v. Atlantic C. L. R. Co. et al.*, Case No. 65-352-Civ-J, U.S.D.C. M. D., Fla., to determine the effect of the injunction entered in Case No. 63-16 upon striking employees and employees of connecting carriers.

On June 19, 1969 the District Court entered the Order which is the subject of the Petition, enjoining the ACL from giving effect to the state court injunction. (A. 194-96)

Following the entry of the District Court's Order of June 19, 1969, the petitioner sought a stay pending appeal from the District Court, from a single judge of the Court of Appeals, and from a three judge panel of the Court of Appeals. All were unanimous in denying the requested stay. The Court of Appeals panel also denied an application for stay pending certiorari.

On July 15, 1969, petitioner presented an application for stay to Mr. Justice Black, who granted a stay of enforcement of the District Court's Order pending the petition for certiorari, and, if granted, pending the Court's judgment, on July 16, 1969. 90 S.Ct. 9 (1969) Meanwhile the Court of Appeals on July 17, 1969 entered its judgment of affirmance of the District Court's Order, based upon a stipulation of the parties which had been filed on July 16, 1969. (A. 238-39). This Court granted certiorari on November 10, 1969.

SUMMARY OF ARGUMENT

A. *The injunctive Order of the District Court dated June 19, 1969 is specifically authorized under 28 U.S.C. §2283 and is not in conflict with Amalgamated Clothing Workers of America v. Richman Brothers, 348 U.S. 511 (1955).*—This case turns upon the power of a Federal District Court to protect its plenary jurisdiction and its

orders in a uniquely complex dispute arising under the Railway Labor Act. The District Court for the Middle District of Florida, Jacksonville Division, has assumed jurisdiction and has entered orders in a large number of cases arising out of the "major disputes" between the Florida East Coast Railway Co. (FEC) and the labor organizations representing its employees. Among these are cases in which the District Court:

a) is administering on a regular basis the "reasonably necessary exceptions" from collective bargaining agreements allowable to the FEC in the exercise of its self-help rights, *United States v. Florida E. C. Ry. Co.*, Case No. 64-107-Civ-J, Order dated October 30, 1964, *aff'd*, 348 F.2d 682 (5th Cir. 1965), *aff'd, sub nom. Brhd. of Ry. & S.S. Clerks v. Florida E.C. Ry. Co.*, 384 U.S. 238 (1966);

b) has ordered the FEC to bargain in good faith with its labor organizations, *Id.*;

c) has entered an order purportedly "mandating" (Pet. Br. P. 46) the carriers which perform interchange with the FEC to continue to do so, *Florida E.C. Ry. Co. v. Jacksonville Terminal Co., et al.*, Case No. 63-16-Civ-J, U.S.D.C., M.D. Fla., Order of January 30, 1963;

d) has assumed jurisdiction of a case brought by the labor organizations to determine the effect of this purported "mandatory" order upon the striking employees of the FEC, and upon the employees of the connecting carriers, *Brhd. of Locomotive Engineers et al. v. Atlantic Coast Line R. Co. et al.*, Case No. 65-352-Civ-J, U.S.D.C. M.D. Fla.; and

e) has entered an order in the present case finding the self-help picketing and pamphleteering carried on by respondents to be lawful and protected under controlling Federal law; *Atlantic C. L. R. Co. v. Brhd. of Locomotive Engineers*, Case (No. 67-335-Civ-J U.S.D.C. M.D. Fla., Order April 26, 1967.

In these circumstances the District Court acted appropriately "where necessary in aid of its jurisdiction" and "to protect or effectuate its judgments", 28 U.S.C. §2283, by enjoining the enforcement of a state court injunction based solely upon inapplicable state law which proscribed the identical self-help activities which the District Court had previously found to be lawful and protected under federal law, and which were within the scope of activity protected from state proscription by this Court's decision in *Brhd. of R. Trainmen v. Jacksonville Terminal Co.*, *supra*. The state court injunction also interfered with the District Court's plenary jurisdiction over the interchange which it purportedly "mandated" in 1963, and has assumed jurisdiction to determine the effect of this order on employees of the struck and non-struck carriers. The state court injunction also infringed upon the District Court's jurisdiction and its enforcement of its orders requiring good faith bargaining on the part of FEC.

Section 2283 was revised in 1948 in order to restore, "the basic law as generally understood and interpreted prior to the Toucey decision." 80th Cong. H. Rep. No. 308. The permissibility of injunctions restraining state proceedings in order to protect a Federal District Court's jurisdiction and orders had been recognized prior to and in this Court's decision in *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 138 (1941), *Looney v. Eastern Texas R. Co.*, 247 U.S. 214 (1918).

Amalgamated Clothing Workers of America v. Richman Brothers, 348 U.S. 511 (1955), is inapplicable here. That decision involved no history of previously assumed jurisdiction and numerous orders by the District Court in cases involving the labor dispute, "interchange", and picketing which was the subject matter of the state court action, and upon which the state court order infringed. Moreover that decision turned upon the lack of subject matter jurisdiction in the Federal District Court, since that Court, as well as the state court was *preempted of jurisdiction* by the exclusive primary jurisdiction of the NLRB.

The Federal District Court below is the rightful forum for the adjudication of self-help rights under the Railway Labor Act. That Court is entitled to protect its jurisdiction and its orders in the circumstances of these cases arising under the Railway Labor Act from infringing state court action. *United Industrial Workers v. Board of Trustees of Galveston Wharves*, 400 F.2d 320 (5th Cir. 1968), *cert. denied*, 395 U.S. 905 (1969).

B. *The picketing involved in the present case is protected by the rationale of this Court's decision in Brhd. of R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969); The Moncrief Yard in which FEC engines, operated by striker replacement crews, daily operate in order to perform all ACL-FEC interchange was found by the District Court below to be, "an integral and necessary part of FEC's operations," (A. 66, 195). As such, it clearly presents a "common situs" situation substantially identical with the Jacksonville Terminal Co. Every effort was made by respondents to confine the effects of the picketing solely to FEC interchange traffic. The stopping of FEC interchange traffic was the sole purpose of the picketing, and

this was acknowledged by ACL management. (A. 27, 62, 137, 109). If anything the picketing involved herein is more "primary" in character than that before the Court in *Jacksonville Terminal*, for the pickets did not request ACL employees not to cross, but merely not to perform the interchange movements which were connected with the FEC's normal business operations. See also. *Local 761, IUE v. NLRB*, 366 U.S. 667 (1961), *United Steelworkers v. NLRB*, 376 U.S. 492 (1964).

In any event the basis of the *Jacksonville Terminal* decision was the institutional unsuitability of the courts, rather than the Congress, to legislate the limits of economic self-help allowable to the parties who have exhausted the procedures of the Railway Labor Act. The state court's "distinction" of the *Jacksonville Terminal* decision, confining that case to its precise facts as reflected in his "Letter Opinion" (A. 181-82) is not supportable.

C. . Brotherhood of R. Trainmen v. Jacksonville Terminal Co., 394 U.S. 369 (1969) ought not be summarily overruled — As pointed out above, the picketing carried on in the present case at the Moncrief Yard "common situs" was, if anything, more "primary" in character than the picketing involved in *Jacksonville Terminal*. While to be sure, the Court was narrowly divided in that decision, a precedent of virtually immediate reversal of a decision by this Court, in the circumstances of this case, would have undesirable effects upon the administration of justice far transcending the importance of this case.

There has been no "escalation" (Pet. Br. p. 50) by the labor organization parties to the FEC dispute, beyond the area where FEC trains, operated by striker replacement

crews, actually and daily operate in the face of lawful strikes. It is appropriately for the Congress and not the courts to legislate "the balance to be struck between the uncontrolled power of management and labor to further their respective interests". * * * The Congress has not yet done so." 394 U.S. at 392.

D. The Norris-LaGuardia Act 29 U.S.C. §101 et seq., did not prohibit the District Court's injunction under the circumstances of this case. —

The injunction entered by the Federal District Court below to stay proceedings in the state court, "where necessary in aid of its jurisdiction" and "to protect or effectuate its judgment" 28 U.S.C. §2283, was not prohibited by the Norris-LaGuardia Act under the facts of this case. In so holding the Court need not go so far as did the Court of Appeals for the Seventh Circuit in *Brhd. of Locomotive Engineers v. Baltimore & O. R. Co.*, 310 F.2d 513, 517-18 (7th Cir. 1962), holding Norris-LaGuardia to be inapplicable to "employers of labor", 29 U.S.C. §102, except where the statute specifically so provides. (We do submit, however, that this holding was a proper construction of the statute.)

The holding of this Court in *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 457-59 (1957) provides more than ample justification for finding the injunction at bar to be without the ambit of Norris-LaGuardia. An injunction staying state proceedings where necessary in aid of the District Court's jurisdiction, and to protect or effectuate its orders entered in many cases involving all aspects of the FEC dispute, was not "a part and parcel of the abuses against which the [Norris-LaGuardia] Act was

aimed." 353 U.S. at 458. The procedural requirements and findings of Section 7 of the Act are equally "inapposite" 353 U.S. at 458, here as in *Lincoln Mills*. Moreover the injunction does not run afoul of Section 4(d) of the Act as claimed by petitioner, even giving the statutory language a totally literal reading.

The injunction here entered while "in form" (Pet. Br. p. 24 fn. 1) running against the ACL, is in fact intended to restrain the state court from proceeding, and that court clearly cannot be considered a "person participating or interested in a labor dispute" 29 U.S.C. §113(b) under any view of *Norris-LaGuardia*.

Finally, the District Court's injunction acted to enforce respondent's self-help rights arising under the Railway Labor Act, for the protection of which this Court has frequently*held the *Norris-LaGuardia* Act to be inapplicable. *E.g.*, *Virginian Ry. Co. v. System Federation No. 40*, 300 U.S. 515 (1937); *Brhd. of R. Trainmen v. Howard*, 343 U.S. 768 (1952); *Brhd. of R. Trainmen v. Chicago R. & I.R. Co.*, 353 U.S. 30 (1957).

ARGUMENT

A. The Injunctive Order of the District Court dated June 19, 1969 is specifically authorized under 28 U.S.C. §2283 and is not in conflict with *Amalgamated Clothing Workers of America v. Richman Brothers*, 348 U.S. 511 (1955)

This case turns upon the power of the Federal District Court to protect its plenary jurisdiction and its orders in a uniquely complex dispute arising under the Railway Labor

Act. The litigation which has been carried on in the United States District Court for the Middle District of Florida over the past seven years, involving the FEC disputes, has virtually achieved a life of its own. As stated by Chief Judge Brown for the Fifth Circuit Court of Appeals in that Court's latest FEC dispute opinion, *Mungin et al. v. Florida E. C. Ry. Co.*, 416 F.2d 1169, 1170 (1969) :

"Now rounding out a decade of Industrial strife as the Nation's longest railroad strike against FEC, the history of which has been memorialized in a dozen or more Court opinions, the tenth year of that turmoil once again puts Judges in the 'locomotive cab.'"

The Judges of the District Court for the Middle District of Florida, Jacksonville Division, have occupied the "locomotive cab" in connection with the FEC disputes at least since 1964, when the Court of Appeals in an opinion by Judge Brown fashioned the doctrine of judicially allowable "reasonably necessary exceptions" to the collectively bargained terms and conditions of employment, which would permit the carrier to operate in the face of lawful strikes by its employees. *Florida E.C. Ry. Co. v. Brotherhood of Railroad Trainmen*, 336 F.2d 172 (5th Cir. 1964), *cert. denied*, 379 U.S. 990 (1965). This doctrine was later approved by this Court in *Brotherhood of Ry. & S. S. Clerks v. Florida E. C. Ry. Co.* 384 U.S. 238 (1966), *affing*, *Florida E. C. Ry. Co. v. United States*, 348 F.2d 682 (5th Cir. 1965). Since the mandate of this Court came down to the District Court in May of 1966 affirming that Court's injunction, the District Court has undertaken to enforce and administer its injunctive order which includes, *inter alia*, a mandatory requirement that the FEC "bargain in good faith with the labor organizations representing the

crafts or classes of FEC's employees". (See Supreme Court Record, Vol. I p. 191, *Brhd. of Ry. & S. S. Clerks v. FEC*, *supra*; this order is also reproduced in *Mungin v. FEC*, 416 F.2d 1169, 1172-73 fn. 16 (5th Cir. 1969)).

This suit, *United States v. Florida E. C. Ry. Co.* No. 64-107-Civ-J, U.S.D.C. M.D. Fla., which was brought and continues to be actively prosecuted by the United States Government as well as the intervening unions has remained pending in the District Court upon issues of FEC violations and contempt of the Court's Orders,¹⁰ FEC bad faith in bargaining with its unions, "reasonably necessary" self-help allowable to FEC, and the complete suitable relief and sanctions to be ordered for FEC's past and continuing violations of the "status quo" provisions of the Railway Labor Act and the Court's Orders. This litigation is continuing in nature with lengthy hearings having been held at regular intervals over the past years since this Court's mandate was issued.

Moreover the interchange between the FEC and its connecting carriers with which this case is concerned, has been the subject of cases pending in the District Court since the first week of the first FEC strike seven years ago. In *Florida E. C. Ry. Co. v. Jacksonville Terminal Co., et al.*, Case No. 63-16-Civ-J, U.S.D.C. M.D. Fla., the District Court entered an order on January 30, 1963, which the petitioner is still claiming in its Brief in the present case "mandated" (Pet. Br. p. 46) the continuance of the interchange between the FEC and its connecting carriers. This order is also the subject of another case pending in the District Court, *Brhd. of Locomotive Engineers et al v. Atlantic C. L. R. Co. et al.*, Case No. 65-352-Civ-J, U.S.D.C. M.D. Fla., in which the labor organizations including re-

¹⁰See footnote 2, *supra*, p. 4.

spondent BLE are seeking a construction of the 63-16 Order to determine its effect, if any, upon striking employees and the employees of connecting carriers. The 63-16 injunction, which was a topic of discussion in the opinion of the Court of Appeals for the Fifth Circuit in *Brhd. of R. Trainmen v. Atlantic C.L.R. Co.*, 362 F.2d 649, 651 (5th Cir. 1966), *aff'd* 385 U.S. 20 (1966), and was also before this Court in the latest *Jacksonville Terminal* case, (Appendix, pp. 36-46, *Brhd. of R. Trainmen v. Jacksonville Terminal Co.* Case No. 69, O.T. 1968) together with the case pending to construe it, obviously indicate the extent of jurisdiction assumed by the District Court in connection with the FEC interchange, in addition to that assumed in the case at bar.

It is within this context of assumed plenary jurisdiction over the continuing litigation involving the administration and supervision by the District Court of the parties to the FEC's disputes, characterized by Chief Judge Brown as the District Court's "railroad duties" *Mungin v. FEC*, 416 F.2d at 1174, and its interchange with connecting carriers, that the District Court Order which is the subject of the present appeal must be viewed.

As a result of the earlier Federal, then later State Court injunctions which have been entered enjoining the self-help activities of the labor organization parties to the FEC dispute, labor's right of economic self-help in this dispute has become, in effect, academic.¹¹ Compare, *Brotherhood of Ry. & S.S. Clerks v. F.E.C.*, 384 U.S. at 246. For

¹¹For example in an article appearing in the Monday, February 2, 1970 edition of the Miami News, headlined "FEC shows \$2.3 million in '69 profits", FEC President W. L. Thornton is reported as follows:

"Thornton claimed that while the railroad is entering the eighth year of a strike by some unions, as a practical matter no one is really aware of the strike." Miami News, February 2, 1970, p.9-A.

where the carrier by its past and continuing violations of the Railway Labor Act has completely negated the economic effects of the withdrawal of services of its employees, the remaining weapon in labor's arsenal is peaceful picketing:

"* * * aimed at applying economic pressure by halting the day-to-day operations of the struck employer, *Steel-workers v. NLRB*, 376 U.S. 492, 499, (1964); and protected primary picketing 'has characteristically been aimed at all those approaching the situs whose mission is selling, delivering, or otherwise contributing to the operations which the strike is endeavoring to halt,' *ibid.*, including other employers and their employees." *Brhd. of R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. at 388 (1969).

This is nothing more nor less than what the BLE has sought to accomplish by its picketing and pamphleteering at the Moncrief Yard where FEC's daily interchange with ACL (and now SCL) is performed.

The District Court below held specifically in the Order from which this appeal was taken that:

"[I]n its Order of April 26, 1967, this Court found that Plaintiff's Moncrief Yard, the area in question, is an integral and necessary part of [Florida East Coast Railway Company's] operations." (A. 195).

There was more than ample evidence before the Court to support this factual finding, based upon FEC's day-to-day use of the Moncrief Yard as the actual situs of all of its interchange operations with the ACL, amounting at the time of the 1967 hearing to 60% of FEC's total

traffic, and by ACL's estimate approximately 25% of all cars handled in the Moncrief Yard. (A. 61, 121). The complaints of the petitioner that picketing was not "confined to the places where the interchange was effected or restricted to times when FEC employees were on the premises," Pet. Br. pp. 46-47, are simply the result of the petitioner's adamant refusal to permit the pickets to enter the Moncrief premises so as to place their line where the FEC engines operate and interchange is effected. (A. 141). Obviously a picket line which appeared at the Moncrief employee entrance after the ACL employees actually performing the interchange moves had already reported for work and were picking up and delivering the FEC traffic would be an appeal addressed to no one. Contrary to the ACL's assertions every effort was made by BLE both by way of requests to the ACL management prior to the commencement of picketing, and by the requests made to the ACL employees by the actual picketing and pamphleteering to confine the effects of the picketing, in so far as possible, solely to the FEC interchange, and the ACL management acknowledged that this was the purpose of the picketing. (A. 109)

The discussion of this Court in its *Jacksonville Terminal* opinion last spring, regarding the difficulty of formulating generalizations governing "common situs" picketing even under the detailed legislative principles available in industries governed by the Labor Management Relations Act, 29 U.S.C. §158(b) (4), made clear that:

"* * * *secondary employers are not necessarily protected against picketing aimed directly at their employees.* In Local 761, International Union of Electrical Radio and Machine Workers, A.F.L.-C.I.O. v. NLRB, *supra*, for example, we

noted that striking employees could picket at a gate on the struck employer's premises which was reserved exclusively for employees of the secondary employer, to *induce those employees to refuse to perform work for their employer which was connected with the struck employer's normal business operations*. The Court affirmed this principle in *United Steelworkers of America, A.F.L.-C.I.O. v. NLRB*, supra, where it held that *striking employees could picket to induce a neutral railroad's employees to refuse to pick up and deliver cars for the struck employer — even though the picketed gate was owned by the railroad, and the railroad's employees would have to pass by the place of picketing to pick up and deliver cars for other plants that were not struck.*" 394 U.S. at 389. (Emphasis added).

But this Court's opinion goes on in its concluding section, designated Roman Numeral VIII, to specifically hold:

"Nor can we properly dispose of this case simply by undertaking to determine to what precise extent petitioners' picketing activities would be protected or prohibited under the terms of the Labor Management Relations Act. For although, in the absence of any other viable guidelines, we have resorted to the LMRA for assistance in mapping out very general boundaries of self-help under the Railway Labor Act, there is absolutely no warrant for incorporating into that Act the panoply of detailed law developed by the National Labor Relations Board and courts under §8(b)(4)."

"Moreover, from the point of view of industrial relations, our railroads are largely a thing apart. * * * 'The railroad world is like a state within a state.'" * * * Thus, if Congress should now find that abuses in the nature of secondary activities have arisen in the railroad industry, see N. 10 *supra*, it might well decide — as it did when it considered the garment and construction industries, see LMRA §8(e) — that this field requires extraordinary treatment of some sort. * * * Certainly it is for Congress, and not the courts, to strike 'the balance to be struck between the uncontrolled power of management and labor to further their respective interests.'" * * * The Congress has not yet done so.

"In short, we have been furnished by Congress neither usable standards, nor access to administrative expertise in a situation where both are required. In these circumstances there is no really satisfactory judicial solution to the problem at hand. However, we conclude that the least unsatisfactory one is to *allow parties who have unsuccessfully exhausted the Railway Labor Act's procedures for resolution of a major dispute to employ the full range of whatever peaceful economic power they can muster, so long as its use conflicts with no other obligation imposed by federal law.* Hence, until Congress acts, picketing — whether characterized as primary or secondary — must be deemed conduct protected against state proscription. * * * *Any other solution — apart from the rejected one of holding that no conduct is protected — would involve the courts once again in a venture for which they are institutionally unsuited.*" 394 U.S. at 391-93. (Emphasis added)

Yet, in the face of this carefully worded holding by this Court, delimiting with precision the area which has been "protected against state proscription" and, as this Court earlier pointed out in its opinion, protected conduct "refer[s] to employee conduct which the States may not prohibit," 394 U.S. at 382, fn. 17, the Duval County Circuit Judge in his remarkable letter opinion (A. 181) refused to dissolve his Temporary Injunction proscribing the BLE picketing based solely upon the application of Florida State law. The following colloquy between Counsel for Petitioner and the Duval County Circuit Judge during the Hearing on the Motion for Dissolution, May 29, 1969 clearly demonstrates the recalcitrance displayed by the State Court:

"Mr. Friedmann:

First, I believe they are asking this Court to view the decision of the Supreme Court in *Trainmen versus Terminal Company* somewhat in the nature of a law review article to the extent that they spend some 10 or 12 pages discussing the Labor Management Relations Act, and discussing what is and what is not a common situs, and totally disregard that discussion and the conclusions they arrived at in this discussion.

Secondly, I believe they are asking this Court to believe or to hold that the present United States Supreme Court believes or feels that it is incapable of making decisions in this area. I believe the history of the Court—

The Court: I don't believe I should go on record as giving my opinion of the Supreme Court.

Mr. Friedmann: All right, sir." (A. 177)

It was only after the Duval County Circuit Judge refused to dissolve or modify his Temporary Injunction of May 3, 1967, in light of this Court's *Jacksonville Terminal* opinion that respondents applied to the Federal District Court for injunctive relief against the enforcement of the state court temporary injunction. This injunction which effectively eliminated BLE's self-help rights based solely upon inapplicable state law, plainly violated the District Court's plenary jurisdiction over the FEC dispute assumed in the pending case of *United States v. Florida E.C. Ry. Co.*, *supra*, and nullified the District Court's earlier order denying the ACL's Motion for injunctive relief in the pending case filed in the District Court by ACL against BLE based upon the identical facts. Also the injunction infringed upon the jurisdiction of the District Court over FEC interchange *Florida E. C. Ry. Co. v. Jacksonville Terminal Co., et al.*, Case No. 63-16-Civ-J USDC MD Fla., where the Court had entered an order purportedly "mandating" interchange (Pet. Br. pp. 46-7) on January 30, 1963. Moreover, the District Court had earlier assumed jurisdiction of a case filed by the unions, *Brhd. of Locomotive Engineers, et al. v. Atlantic C. L. R. Co. et al.*, Case No. 65-352-Civ-J, to determine the effect of the 63-16 injunction upon FEC's striking employees, and the employees of the connecting carriers.

The District Court entered the injunctive Order from which this appeal was taken on June 19, 1969 expressly as, "necessary in aid of its jurisdiction", and "to protect or effectuate its judgments", within the express terms and meaning of 28 U.S.C. §2283.

Section 2283 of the Judicial Code, and its predecessors have never been limitations upon the jurisdiction of the Federal Courts, but have been "recognized as merely

a limitation on general equity powers," *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 154 fn. 24 (dissenting opinion). *Accord, Smith v. Apple*, 264 U.S. 274 (1924).

As explained by Chief Judge Haynsworth of the Court of Appeals for the Fourth Circuit:

"It [Section 2283] is a limitation upon the exercise by a District Court of its equity jurisdiction. * * * Since the Statute was fathered by the principles of comity, it has been held that the statute should be read in the light of those principles and, though absolute in its terms, is inapplicable in extraordinary cases in which an injunction against state court proceedings is the only means of avoiding grave and irreparable injury." *Baines v. City of Danville*, 337 F. 2d 579 (4th Cir. 1964), *cert. den.* 381 U.S. 939, *aff'd.* 384 U.S. 890 (1966).

The prohibition embodied in the present Section 2283, has had a long and exceedingly complex development, as the Federal Courts following the Civil War fashioned certain "implied" exceptions to the then absolute statutory language. See Warren, *Federal and State Court Interference*, 43 Harv. L. Rev. 345 (1930). This process received a set back in the decision of this Court in *Toucey v. New York Life Ins. Co.*, 314 U.S. 118 (1941) which held that there was no warrant in precedent, and this Court would not recognize an "implied" exception to permit the Federal Courts to enjoin the "relitigation" in State Courts of cases heard in the Federal Courts. Mr. Justice Reed's vigorous dissenting opinion in *Toucey*, how-

ever, carried the day in the Congress.¹² In the 1948 codification and revision of the Judicial Code, the present Section 2283 was enacted. The Reviser's Note to the Section specifically states that "the revised section restores the basic law as generally understood and interpreted prior to the *Toucey* decision," 80th Cong. H. Rep. No. 308, by the addition of the statutory phrase, "*to protect or effectuate its judgments.*" In addition the statutory phrase "*where necessary in aid of its jurisdiction*" was added to the statute, according to the Reviser's Note "to conform to Section 1651 of this title * * *". Section 1651¹³ is, of course, the All-Writs Statute.

This statutory history is relevant here primarily as an aid to the construction of Section 2283 which has been described by this Court as "an ambiguous statute when the aids to construction are so meagre". *Leiter Minerals v. United States*, 352 U.S. 220, 226 (1957). The restoration by Congress of "the basic law as generally understood and interpreted prior to the *Toucey* decision", Reviser's Note, *supra*, is relevant in that one of the leading decisions analyzed by the Court in both the majority and dissenting opinions in *Toucey* has, we submit, great significance to the present case. This decision is *Looney v. Eastern Texas R. Co.*, 247 U.S. 214 (1918). While *Looney*

¹²With *Toucey v. New York Life Ins. Co.*, 314 U.S. 118 (1941) having been expressly repudiated by the Congress in the 1948 revision of §2283, Petitioner's repeated reliance upon the philosophy expressed in the majority opinion must be viewed with some suspicion. (Pet. Br. pp. 25-26).

¹³28 U.S.C. §1651

(a) The Supreme Court and all Courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

was not considered a "relitigation" case by the *Toucey* majority, neither was its authority questioned. The analysis of *Looney* by Mr. Justice Frankfurter for the majority in *Toucey* was as follows:

"*Looney v. Eastern Texas R. Co.*, 247 U.S. 214 was not a 'relitigation' case. The Texas federal district court, in a suit brought by various carriers, granted a preliminary injunction restraining the State Attorney General from proceeding to assess fines and penalties upon them for complying with an order of the Interstate Commerce Commission. The Attorney General nevertheless instituted proceedings in a state court to enjoin the carriers from complying with the Commission's order, and a supplemental bill was filed in the federal court to stay the proceedings. The district court issued the injunction, and this Court dismissed an appeal under §266, 28 U.S.C.A. §380, holding that the injunction below was not based upon the unconstitutionality of the Texas State Statutes, but *was granted merely to protect its jurisdiction until the suit brought by the carriers was finally settled.*" 314 U.S. at 138. (Emphasis added)

Mr. Justice Reed's opinion for the *Toucey* dissenters similarly analyzes the *Looney* decision as follows:

"This Court now lays the *Looney* case aside as not being a 'relitigation' case. While the injunction in the *Looney* case was not in aid of a decree it was in aid of jurisdiction taken to determine a Texas rate controversy. A temporary injunction had been entered to maintain the status quo until a review by the Interstate Commerce Com-

mission. *A temporary injunction may well be likened to a decree and entitled to the same protection against relitigation. Such was evidently this Court's view.* It said 247 U.S. at page 221, 38 S. Ct. at page 462, 62 L. Ed. 1084: "So important is it that unseemly conflict of authority between state and federal courts should be avoided by maintaining the jurisdiction of each free from the encroachments of the other that Section 265 of the Judicial Code, Revised Statutes, Section 720, Act of March 2, 1793, c. 22, 1 stat. L. 334, has repeatedly been held not applicable to such an injunction." 314 U.S. at 151-2. (Emphasis added)

Looney then is a case in which a Federal District Court, having properly assumed subject matter jurisdiction over a controversy subject to controlling federal law, and not involving a *res* of any type, was held by this Court to be warranted in enjoining the state proceedings, "in aid of its jurisdiction", and "to protect or effectuate its judgments" in the language of the current statute.

The Reviser's Note concerning the "in aid of jurisdiction" exception to Section 2283 says nothing about its confinement to cases involving a *res*. Moreover, the dictum appearing in this Court's opinion in *Kline v. Burke Construction Co.*, 260 U.S. 226 (1922) often cited for the proposition that the "in aid of jurisdiction" exception is confined to interference with a Federal Court's "*in rem*" jurisdiction, does not support this proposition. In *Brown v. Pacific Mut. Life-Ins. Co.*, 62 F. 2d 711 (4th Cir. 1933), Circuit Judge Parker explained the *Kline* decision:

"And upon further consideration of the Kline case we find nothing in it which limits to actions in rem the right of a federal court of equity to protect its jurisdiction. It involved no situation where it was necessary for a court of equity to protect against encroachment on its jurisdiction or the lawful effect of its orders and decrees but merely one where independent proceedings were pending in state and federal courts, in both of which the ultimate relief sought was a money judgment." 62 F. 2d at 713.

This Court's decision in *Amalgamated Clothing Workers of America v. Richman Brothers*, 348 U.S. 511 (1955) said by Petitioner to be controlling in this case and to prohibit the District Court's Order of June 19, 1969, must be considered against this background of the litigative history in the District Court of the FEC dispute, and of the origins of Section 2283.

The first and most obvious distinction between the present case and *Richman Brothers* is that unlike the present case there had been and was no extensive litigation pending in the United States District Court for the Northern District of Ohio involving the dispute between the Clothing Workers and the Richman Brothers. Indeed, the sole action involving the dispute which had been taken by the Ohio District Court prior to its denial of an injunction against the state proceedings, was to hold in a removal proceeding that it possessed no subject-matter jurisdiction on the ground that it was *preempted of jurisdiction* by the exclusive jurisdiction of the National Labor Relations Board. There was no history, such as is present in this case, of seven years of litigation pending in the District Court, involving mandatory injunctive orders

culminating in three decisions by this Court, concerning the self-help rights of the carrier, and of the union parties to the FEC dispute. Moreover, there had been no mandatory injunction in *Richman Brothers* requiring good faith bargaining on the part of a carrier subject to the Railway Labor Act with regular administration and supervision of the self-help allowable to the carrier in order to effectuate its right of self-help. Also, in contrast to the present case, there, of course, had been no Order previously entered by the District Court in *Richman Brothers* after a full evidentiary hearing, which made factual findings from the evidence concerning the picketing which was the subject of the later state court order and which delineated the self-help rights of the union party in its dispute with a carrier under controlling federal law.¹⁴ Nor were there

¹⁴While the Petitioner was successful in convincing the District Court to remand the state court proceeding on each of the three occasions when it was removed by Respondents, these directly unreviewable orders of remand 28 U.S.C. §1447(d), were each, we submit, clearly erroneous under this Court's decision in *Avco Corporation v. Aero Lodge No. 735*, 390 U.S. 557 (1968), together with this Court's *Jacksonville Terminal* decision. In *Avco* as here the company claimed that their state court action was allegedly based solely upon a state-created right, and that the Federal District Court therefore did not possess "original jurisdiction" within the removal statutes. 28 U.S.C. §§1441(a) (b).

Although the District Court here involved had held in the pending action that it *did* have subject-matter jurisdiction under 28 U.S.C. §1337 (A. 66) based upon the identical operative facts which formed the basis of the state case, it nonetheless remanded the case to the state court; and it did so even after this Court's decision in *Jacksonville Terminal* held that state law was preempted from application in Railway Labor Act self-help controversies, and after the Petitioner shifted its ground in state court to include a Federal constitutional claim, later waived. (A. 173-74). See discussion *supra* at pp. 19.

Removal, if allowed, would of course have precluded the necessity for the injunction against the state proceedings later granted by the District Court. Since orders of remand cannot be directly reviewed unless they are denied, we respectfully and earnestly submit that, in the interests of sound judicial administration, the removability of the case at bar should be ruled upon by the Court.

cases pending involving an injunction purportedly "mandating" interchange, and a case filed to obtain a construction of that injunction as it affected employees of the struck and non-struck carriers.

Since this extensive history of litigation and District Court orders were not present in *Richman Brothers*, no consideration was given by the Court to the specific statutory exception "to protect or effectuate its judgments", which we discuss in detail, *infra*, at pp. 49-51.

Richman Brothers turns rather on the specific statutory exception to §2283 which permits a District Court to issue injunctions, "where necessary in aid of its jurisdiction."¹⁵ In this connection the Court distinguished the jurisdictional stance of *Richman Brothers* from that which it had found in *Capital Service, Inc. v. NLRB*, 347 U.S. 501 (1954), where an injunction against state court proceedings sought by the NLRB had been granted and af-

¹⁵This view is in accordance with that taken by Professor Moore, who, as pointed out by Petitioner was consultant to the Revisers of §2283 (Pet. Br. p. 34 n. 5):

"The second exception permits a federal court to grant an injunction against state proceedings 'where necessary in aid of its jurisdiction'. This puts back into §2283 some of the judicial flexibility, which *Toucey* had removed from the statute. And despite the strict reading of §2283 by the *Richman* case, flexibility still remains for *Richman*, as we shall see, held only that the district court there had no jurisdiction to aid. But if, on the other hand, a federal court has jurisdiction, then, under the terms of §2283, it may enjoin state court proceedings where necessary in aid of its jurisdiction." Moore's *Federal Practice*, 2nd Ed. Vol. 1A, p. 2320.

The Court also considered whether the Taft-Hartley Act provided "express authorization for an injunction within the meaning of the first statutory exception of §2283 and concluded that it did not.

firmed by the Court. This distinction is highlighted by the following language from the Court's opinions. In *Capital Service* the Court held:

"The state court injunction restrains conduct which the District Court was asked to enjoin in the §10(1) proceeding brought in the District Court by the Board's Regional Director against the union. * * * *If the state court decree were to stand, the Federal District Court would be limited in the action it might take. If the Federal District Court were to have unfettered power to decide for or against the union, and to write such decree as it deemed necessary in order to effectuate the policies of the Act, it must be freed of all restraints from the other tribunal. To exercise its jurisdiction freely and fully it must first remove the state decree. When it did so, it acted 'where necessary in aid of its jurisdiction.'*" 347 U.S. at 505-6. (Emphasis added)

In *Richman Brothers*, however, it was not the Board but a private litigant who sought to invoke the jurisdiction of the district court. Here the court stated:

"Congress explicitly gave such jurisdiction to the district courts only on behalf of the Board on a petition by it or 'the officer or regional attorney to whom the matter may be referred'. §10(j), (1), 61 Stat. 149, 29 U.S.C. §160 (j) (1). To hold that the Taft-Hartley Act also authorizes a private litigant to secure interim relief would be to ignore the closely circumscribed jurisdiction given to the District Court and to generalize where Congress has chosen to specify. *

"3. The exception to §2288 which permits the District Court to issue injunctions 'where necessary in aid of its jurisdiction' remains to be considered. In no lawyer-like sense can the present proceeding be thought to be in aid of the District Court's jurisdiction. *Under no circumstances has the District Court jurisdiction to enforce rights and duties which call for recognition by the Board. Such non-existent jurisdiction therefore cannot be aided.*

Insofar as protection is needed for the Board's exercise of its jurisdiction, Congress has, as we have seen, specifically provided for resort, but only by the Board, to the District Court's equity powers. Since the very presupposition of this proceeding is that jurisdiction of the subject matter of which the employer complained was in the Board and not in the state court, any aid that is needed to protect jurisdiction is the aid which the Board may need for the safeguarding of its authority. Such aid only the Board could seek, and only if, in a case pending before it, it has satisfied itself as to the adequacy of the complaint." 348 U.S. at 517, 519-20." (Emphasis added)

Under the scheme established by the Railway Labor Act, 45 U.S.C. §151 et seq., however, there is no agency comparable to the NLRB and it is the Federal district courts which are the primary arbiters of law in the exercise of their jurisdiction over actions arising under " * * * any Act of Congress regulating Commerce". 28 U.S.C. §1337. *International Ass'n of Machinists v. Central Airlines*, 372 U.S. 682 (1963).

Private litigants under the Railway Labor Act may freely invoke the jurisdiction of the Federal District Court, and the history of the FEC dispute is replete with the District Court for the Middle District of Florida's exercise of this jurisdiction. In the specific instance of the picketing here involved it was the petitioner who invoked the jurisdiction of the District Court by its allegations of the illegality of respondents picketing under controlling federal law. To petitioner's dismay, however, the District Court ruled that the BLE had the right, under Federal law, to engage in the self-help picketing of which petitioner complained. The District Court in its Order of April 26, 1967, (A. 64-68) which preceded this Court's *Jacksonville Terminal* opinion by two years, held that not only the Norris-LaGuardia Act, 29 U.S.C. §101 et seq., but also Section 20 of the Clayton Act, 29 U.S.C. §52, was applicable to the facts before the Court. (A. 67).¹⁶ This statute provides that all such conduct, specified within its terms, shall not " * * * be considered or held to be violations of any law of the United States." See, *United States v. Hutcheson*, 312 U.S. 219 (1941). While this Court did

¹⁶Petitioner's oft-stated position (Pet. Br. 2, 12, 13, 19, 20, 35-40) that the April 26, 1967 order of the District Court was based solely upon the Court's finding of the applicability of the Norris-LaGuardia Act to Respondent's conduct, thus merely precluding an injunction is not borne out by the Record or the Order. In addition to the citation of Section 20 of the Clayton Act in the Court's 1967 Order, the District Judge characterized his holding in his June 19, 1969 Order as a "delineation of rights of the parties". (A. 196). Petitioner does correctly point out (Pet. Br. pp. 12-38) that the 1967 Order also contains a citation to *Brotherhood of Locomotive Engineers v. Baltimore & Ohio R. Co.*, 372 U.S. 284 (1963) the leading decision of this Court prior to *Jacksonville Terminal* on labor's right of self-help when the procedures of the Railway Labor Act have been exhausted. This, of course, is the whole point of the case and of the District Court's Orders, i.e., the legality of respondent's self-help activity under Federal law, and the necessity of protecting that activity from state proscription, "in aid of its jurisdiction" and "to protect and effectuate its judgments".

not rely upon the Clayton Act in its *Jacksonville Terminal* opinion, the parties there argued the application of Section 20 at length, (See Brief for Petitioners, pp. 42-61; Brief for Respondent, pp. 41-44; Brief for Ass'n. of Amer. R.R., Amicus pp. 6-16; Brief for AFL-CIO, Amicus pp. 12-17) and the Court cited the *Hutcheson* case with approval,¹⁷ 394 U.S. at 382.

With the appearance of this Court's *Jacksonville Terminal* decision in March, 1969, the legality of the picketing here involved and its protection from state proscription was manifest. See discussion, *infra*, pp. 53-56. Despite the *Jacksonville Terminal* decision and the District Court's prior finding of the applicability of the Clayton Act, petitioner and the Florida state court refuse to recognize the validity of Mr. Justice Brandeis' statement that, "One has no constitutional right to a 'remedy' against the lawful conduct of another." *Senn v. Tile Layers Protective Union*, 301 U.S. 468, 483 (1937).

In this situation, with the District Court having assumed subject-matter jurisdiction over this specific instance of self-help picketing, as well as the entire FEC dispute, having earlier held such picketing to be lawful conduct under controlling Federal law, as well as having entered numerous orders concerning the affected interchange and regulating the self-help allowable to the FEC and a mandatory injunction requiring good faith bargaining, and, with the benefit of this Court's *Jacksonville*

¹⁷Petitioner's dismissal of §20 of the Clayton Act as a "statutory antique" (Pet. Reply Brief to Brief in Opposition, p. 4) appears to suggest a new form of judicial repeal or perhaps a return to "statutory misconstruction." *Brotherhood of R.T. v. Jacksonville Terminal Co.*, 394 U.S. at 382.

Terminal decision holding such picketing to be lawful and "protected from state proscription". 394 U.S. at 393, the District Court acted to enjoin the state proceedings, "in aid of its jurisdiction", and "to protect or effectuate its judgments."

In *Richman Brothers* it was the subject-matter jurisdiction of the State and Federal Courts which was "preempted" by the exclusive jurisdiction of the NLRB, but in the present case it is the application of state law which is "preempted" by virtue of the protection by Federal law of Federal rights enforceable by the Federal courts. These Federal rights were the prior subject of adjudication in a Federal Court order entered pursuant to the Court's subject matter jurisdiction, and their enforcement would have enormous impact on the enforcement or frustration of other mandatory orders of the Court. This case is simply not comparable to *Richman Brothers*.

Additional distinctions between *Richman Brothers* and this case present themselves. In *Richman Brothers* the Court found no "recalcitrance on the part of state courts" 348 U.S. at 518-19, to apply the doctrine of jurisdictional preemption announced in *Garner v. Teamsters Local 776*, 346 U.S. 485 (1953). The course of this case, on the contrary, demonstrates manifest recalcitrance on the part of the Duval County Circuit Court to abide by this Court's *Jacksonville Terminal* decision. This Court has delimited with precision in that opinion the "extent of state power to regulate the economic combat of parties subject to the Railway Labor Act." 394 U.S. at 372. The line there drawn is not the "subtle line of demarcation", 348 U.S. at 518 of jurisdictional preemption with which the Court was concerned in *Richman Brothers*, but rather a

far less complex determination dictated by the institutional unsuitability of the Courts, rather than the Congress to make the ultimate determinations required. This fundamental basis of the *Jacksonville Terminal* decision was flouted by the state court. The *Richman Brothers* opinion also emphasized the desirability of limiting the number of courts which pass upon a case "before the rightful forum for its settlement is established." 348 U.S. at 519. Can there be any doubt that the rightful forum for this case is the District Court for the Middle District of Florida? Unlike *Richman Brothers*, there is no "penumbral region", 348 U.S. at 521 in connection with disputes subject to the Railway Labor Act which has been left unclarified by *Jacksonville Terminal*, in which the state courts may interpose their own notions of proper labor policy.

The reasons for the applicability to this case of the third statutory exception in Section 2283 "to protect or effectuate its judgments", are made absolutely clear by the recent decision by the Court of Appeals for the Fifth Circuit in a parallel Railway Labor Act controversy, *United Industrial Workers v. Board of Trustees of Galveston Wharves*, 400 F. 2d 320 (5th Cir. 1968), cert. denied, 395 U.S. 905 (1969).

In *Galveston Wharves* the Court of Appeals affirmed a Federal injunction against the enforcement of a state court injunction based upon Texas state law which prohibited peaceful picketing by a union incident to a lawful strike under the Railway Labor Act. The state court had enjoined all picketing at the Galveston Wharves, with the exception of the situs of a closed grain Elevator (which closing in violation of the "status quo" provisions of the Railway Labor Act was the cause of the dispute). The Court of Appeals in two prior opinions (351 F. 2d

184; 368-F. 2d 412), had found the dispute to be "major" under the Railway Labor Act, and the District Court had entered an order requiring the parties to bargain. In affirming the District Court's injunction, the Court of Appeals stated:

"* * * we conclude that the injunction issued by the district court was proper to carry out that court's bargaining order.

Economic action after exhaustion of Section 6 procedures is an integral part of the collective bargaining scheme Congress prescribed when it enacted the Railway Labor Act. The effect of the state court injunction against a possible union strike is perhaps to render impotent the duty to bargain imposed by this Court. Texas and Texas courts may not agree with this view; but when the Railway Labor Act is otherwise applicable—as it is here—the Texas view is irrelevant. For the Railway Labor Act preempts all state legislation purporting to regulate the labor relations of covered employees." 400 F. 2d at 331.

The massive FEC dispute litigation pending in the District Court for the Middle District of Florida, and the mandatory injunctive orders issued by the Court seeking to compel good-faith bargaining on the part of FEC, supervising the self-help allowable to the FEC in accordance with the mandate of this Court in *Brhd of Ry. & S.S. Clerks v. Florida E.C. Ry. Co.*, *supra*, and fashioning suitable relief for FEC's past and continuing violations of the Railway Labor Act, are all being thwarted and frustrated by the state court injunction prohibiting the exercise by the BLE of its lawful self-help, which the District

Court acted to remove. Moreover, these orders which the District Court's injunction was entered to protect, have been entered on behalf of the United States Government as well as the intervening unions, which as earlier mentioned is actively prosecuting its case against FEC. *United States v. Florida E.C. Ry. Co.*, Case No. 64-107-Civ-J (M.D. Fla.); Preliminary Injunction *aff'd*, 348 F. 2d 682 (5th Cir. 1965); *aff'd sub nom. Brhd. of Ry. & S.S. Clerks v. Florida E.C. Ry. Co. supra*. This protection by the District Court of orders entered on behalf of the Sovereign is significant in that Section 2283 is inapplicable to the United States. *Leiter Minerals v. United States*, 352 U.S. 220 (1957).

The fact that the District Court's earlier order of April 26, 1967 finding the picketing legal and denying an injunction was not a final adjudication of the pending federal case does not preclude the applicability of the third or "to protect or effectuate its judgments" exception to Section 2283. In *Sperry Rand Corporation v. Rothlein*, 288 F. 2d 245 (2nd Cir. 1961) Chief Judge Lumbard writing for the Court held in affirming an injunction to effectuate a discovery order in a pending federal case:

"Nothing in the concluding phrase of §2283— which authorizes injunctions against state court proceedings when necessary 'to protect or effectuate' federal court judgments—limits its scope to final judgments. The policies which impelled Congress to enact 28 U.S.C. §2283 in order to overrule the decision in *Toucey v. New York Life Ins. Co.*, 1941, 314 U.S. 118, 62 S. Ct. 139, 86 L. Ed. 100, apply to interlocutory as well as to final decrees." 288 F. 2d at 249.

See also *Looney v. Eastern Texas R. Co.*, 247 U.S. 214 (1918); *Ex Parte Simon*, 208 U.S. 144 (1908).

There are additional common sense reasons why the District Court's June 19, 1969 Order should be affirmed. If this Court were to hold disregarding all of the other cases pending regarding the FEC dispute and the interchange, that by reason of the preliminary status of the District Court's April 26, 1967 Order it is not entitled to be protected and effectuated, a substantially meaningless race for the entry of a Final Judgment would ensue.

The obvious reason that respondents have not sought the entry of a "Final" Order by the state court is that once such an order is entered the petitioner would immediately assert its alleged *resjudicata* effect in the federal action, claiming that the state court had "adjudicated" respondents "federal preemption defenses". If the federal Court on the other hand were to enter its "Final Order" first, it would then unquestionably be entitled to stay the "relitigation" of the matter in the state court, even under petitioner's reading of Section 2283. This essentially meaningless exaltation of form over substance ought not be controlling in the extraordinary circumstances of this case. Compare, *Pope v. Atlantic Coast Line R. Co.*, 345 U.S. 379 (1953); *Local No. 438 v Curry*, 371 U.S. 542 (1963). Should the state court win the race, an additional three year delay similar to that in *Jacksonville Terminal* while respondents exhaust the Florida State appellate procedures, would bring the FEC dispute to its eleventh year, and even this seemingly interminable labor dispute is not likely to survive into a second decade.

B. *The picketing involved in the present case is protected by the rationale of this Court's decision in Brh'd. of R. Trainmen v. Jacksonville Terminal Co., 394 U.S. 369 (1969)*

Petitioner devotes a major portion of its Brief (Pet. Br. pp. 32-42) to a defense of what it terms the "intelligible distinction", Pet. Br. p. 21, drawn by the Duval County Circuit Judge to confine the *Jacksonville Terminal* decision of this Court to its precise facts. We respectfully submit that the "Letter Opinion" of the Circuit Judge (A. 181-182) and the purported distinctions drawn in its support are indefensible, except by the type of logic which would recognize as a valid distinction the fact that the state court judge in the present case is several doors down the hall in the Duval County Court House from the Judge who entered the *Jacksonville Terminal* injunction.

As we read *Jacksonville Terminal* the holding of the Court is to be found in the concluding portion of the opinion designated Roman Numeral VIII, 394 U.S. at 390-3. The holding, we submit, is primarily based upon the premise that it is for the Congress to legislate the limits of the economic self-help allowable to parties who have exhausted the procedures of the Railway Labor Act, and that "[a]ny other solution—apart from the rejected one of holding that *no* conduct is protected—would involve the courts once again in a venture for which they are institutionally unsuited." 394 U.S., at 393.

Notwithstanding the above, the state court as indicated by its "Letter Opinion" determined that it was institutionally suited to make such determinations, and to make its conclusions from the facts directly opposite from those of the Federal District Court which had previously ruled on the same facts, prior to the *Jacksonville Terminal* decision of this Court.

The Federal District Court had found in its 1967 Order that, "The use of ACL's Moncrief Yard by FEC to receive and deliver freight is an integral and necessary part of FEC's operations." (A. 66). As restated in its 1969 Order the Federal District Court said, "In its Order of April 26, 1967, this Court found that Plaintiff's Moncrief Yard, the area in question, is an integral and necessary part of [Florida East Coast Railway Company's] operations," (A. 195).

The facts of FEC's daily interchange operations within the Moncrief Yard can hardly be denied by the Petitioner. As a percentage of the total amount of FEC interchange traffic handled, the Moncrief Yard accounted in 1967 for 60%, as opposed to 40% within the Terminal Company. (A. 61). With the merger of the ACL and SAL this percentage is likely to be significantly greater today, and could be made total by the SCL and FEC. The "common situs" aspect of the FEC's Moncrief Yard operations is readily apparent.

Moreover the picketing at Moncrief Yard as opposed to that carried on at the Terminal Company was not picketing in the usual sense of requesting employees not to cross and not to perform any work, but was confined to an appeal to ACL employees, "to induce those employees to refuse to perform work for their employer which was connected with the struck employer's normal business, operations." *Brhd. of R. Trainmen v. Jacksonville Terminal Co.*, *supra* 394 U.S. 389, See, *Local 761 IUE v. NLRB*, 366 U.S. 667 (1961). And as the Court further stated in *Jacksonville Terminal*:

"The Court affirmed this principle in *United Steelworkers of America, A.F.L.-C.I.O. v. NLRB, supra*, where it held that striking employees could picket to induce a neutral railroad's employees to refuse to pick up and deliver cars for the struck employer—even though the picketed gate was owned by the railroad, and the railroad's employees would have to pass by the place of picketing to pick up and deliver cars for other plants that were not struck." 394 U.S. at 389.

Thus Petitioner's argument that "The only relationship the [Moncrief] Yard has with the FEC is interchange through 'pick-up and delivery,'" (Pet. Br. p. 21) appears simply specious, for what else does one railroad do with another but pick up and deliver cars, and what is more essential to a railroad's normal business operations than "pick-up and delivery." And where the actual situs of this regular daily pick-up and delivery, by design of the carriers, is within the premises of a non-struck carrier, cannot the striking employees under the Railway Labor Act, as under Taft-Hartley, "picket to induce a neutral railroad's employees to refuse to pick up and deliver cars for the struck employer—even though the picketed gate was owned by the railroad, and the railroad's employees would have to pass by the place of the picketing to pick up and deliver cars for other plants that were not struck." 394 U.S. at 389. See, *United Steelworkers v. NLRB*, 376 U.S. 492 (1964).

We submit that if anything, the picketing at the Moncrief Yard "common situs" in the present case is substantially more "primary" in character than the picketing which was before the Court in *Jacksonville Terminal* and

was held to be "conduct protected against state proscription." 394 U.S. at 393. If despite *Jacksonville Terminal* the decision as to whether picketing by parties who have exhausted the Railway Labor Act procedures is "primary" or "secondary" is a determination to be made by the courts, and if, despite *Jacksonville Terminal*, this distinction is to be determinative of the area "protected against state proscription," 394 U.S. at 393, we submit the Federal Court's determination that this picketing was lawful and protected, and its injunction against the enforcement of the proscribing state court injunction were clearly proper as "necessary in aid of its jurisdiction" and "to protect or effectuate its judgments", 28 U.S.C. §2283. See discussion, *supra*, at pages 27-52.

C. *Brhd. of R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969) ought not be summarily overruled in this case.

In the portion of Petitioner's Brief, (Pet. Br. pp. 52-59) devoted to the proposition that this Court should overrule *Brhd. of R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969), there is a considerable rehash of the arguments made by the carrier there, both in its Brief on the merits and its Petition for Rehearing which was denied in May 1969. The argument for the union party there involved was fully made to the Court in its Brief upon the merits and we do not deem it essential to burden the Court with a repetition of that argument here. The statutory "gap" which petitioner complains of and seeks to reargue here (although at times referred to as a "void", Pet. Br. p. 54) has been fully briefed by the union party for the Court not only in *Jacksonville Terminal*, but also in the earlier case in this Court to which petitioner was a named party, *Atlantic Coast Line R. Co. et al. v. Brhd. of R.*

Trainmen, 385 U.S. 20 (1966), *affing*, 362 F. 2d 849 (5th Cir. 1966). We would ask to have the Court consider those union Briefs and the argument therein contained as incorporated herein by reference.

We, of course, recognize that the Court has been sharply divided on the matter of the Terminal Company picketing. If the carriers are distressed by the result reached by the Court in *Jacksonville Terminal* both the opinion for the Court and the dissenting opinion indicate that it is a matter for the Congress to consider.

We respectfully submit that it would be grossly inappropriate for the Court to render stillborn its *Jacksonville Terminal* decision by overruling it in this case. As we have pointed out above, the picketing in the present case did not request so-called "neutral" employees to cease to perform work for their employer but was confined simply to an appeal not to perform work by, "employees of neutral delivery men furnishing day-to-day service essential to the [FEC's] regular operations." *United Steelworkers v. NLRB*, 376 U.S. 492, 499 (1964). There is a substantial basis for finding the picketing in the present case more "primary" than the picketing involved in *Jacksonville Terminal*, even if such a determination were relevant under the doctrine established in *Jacksonville Terminal*.

Moreover, impelling consideration of judicial administration and the place of this Court in our system of justice weigh against a quick reversal of the doctrine enunciated in *Jacksonville Terminal*, particularly in light of the Florida State Court's action in this case. The attitude expressed by the state court judge, see page 35, *infra*, and exemplified by his "Letter Opinion" (A. 181-2) "distinguishing" the *Jacksonville Terminal* decision would be, in effect, rewarded by the immediate reversal of the decision

by this Court. In the future any narrowly divided decision of the Court might well be subject to such "distinction" in the hope expressed or implied that time would effect a reversal of the attitude of the Court. In any labor controversy, particularly, the lapse of time is ordinarily the critical factor in resolving the dispute. Compare, *Local No. 438 Construction & General Laborers' Union v. Curry*, 371 U.S. 542 (1963). Such a precedent of virtually immediate reversal of a decision of this Court would have undesirable effects upon the administration of justice, we submit, far transcending the importance of the present case.

There has been no "escalation" (Pet. Br. p. 50)' by the labor organization parties to the FEC dispute, beyond the areas where FEC trains, operated by striker replacement crews, actually and daily operate in the face of lawful strikes. It is appropriately for the Congress and not the courts to legislate "the balance to be struck between the uncontrolled power of management and labor to further their respective interests'. * * * The Congress has not yet done so." 394 U.S. at 392.

D. *The Norris-LaGuardia Act, 29 U.S.C. §101 et seq., did not prohibit the District Court's injunction under the circumstances of this case.*

This injunction entered by the Federal District Court below to stay proceedings in the state court, "where necessary in aid of its jurisdiction or to protect or effectuate its judgments"; 28 U.S.C. §2283, was not prohibited by the Norris-LaGuardia Act, 29 U.S.C. §101 et seq., under the facts of this case. Petitioner's argument in this regard simply and completely ignores both the specific language of the Act, and the manifest intent and spirit of the framers of this legislation. The right to unfettered enforcement

of a state court injunction which invades the subject-matter jurisdiction properly assumed by a Federal District Court, and nullifies the enforcement of previous District Court orders is nowhere to be found as conduct protected by the Norris-LaGuardia Act.

In holding Norris-LaGuardia inapplicable to the Federal injunction at bar, the Court need not go so far as did the Court of Appeals for the Seventh Circuit in *Brotherhood of Locomotive Engineers v. Baltimore & O.R. Co.*, 310 F. 2d 513, 517-18 (7th Cir. 1962) which held, based upon a "thorough examination of the Act and its pertinent legislative history", 310 F. 2d at 517, that Norris-LaGuardia was inapplicable as applied to " * * * employers of labor" within Section 2, 29 U.S.C. §102, except where the statute specifically so provides.¹⁸ We do submit, however, that this holding was a proper construction of the statute.

¹⁸The only provisions of the Act which specifically include employer conduct are Sections 3(a) and (b), 29 U.S.C., §103(a) (b), and Section 4(b), 29 U.S.C. §104(b). These provisions proscribe the enforcement of "yellow dog" contracts. In an obvious attempt to protect the statute from constitutional attacks in a judicial atmosphere of undue emphasis upon substantive due process protecting the rights of property, the Congress included a prohibition against the enforceability of promises "not to join, become, or remain a member", 29 U.S.C. §103(a), or to "withdraw from an employment relation in the event he joins, becomes or remains a member", 29 U.S.C. §103(b), of any "employer organization" as well as "labor organization." It hardly need be said that the abuses which Congress was aiming at eliminating here were not really those caused by membership in "employer organizations". As the Court of Appeals for the Seventh Circuit stated of these provisions: "Two isolated exceptions to this overall purpose appear in the Act and serve to emphasize that they are exceptional provisions." *Brhd. of Locomotive Engineers v. Baltimore & O. R. Co.*, 310 F.2d at 518.

A full examination of the text and history of the Norris-LaGuardia Act supports the reading given it by the Court of Appeals for the Seventh Circuit.

The course which this Court followed in *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 457-59 (1957) provides more than ample justification for finding the injunction at bar to be without the ambit of Norris-LaGuardia. In *Lincoln Mills* the Court held that:

"Section 7 of that Act prescribes stiff procedural requirements for issuing an injunction in a labor dispute. The kinds of acts which had given rise to abuse of the power to enjoin are listed in §4. The failure to arbitrate was not a part and parcel of the abuses against which the Act was aimed. * * * Though a literal reading might bring the dispute within the terms of the Act * * * we see no justification in policy for restricting §301(a) to damage suits, leaving specific performance of a contract to arbitrate to the inapposite procedural requirements of that Act. * * * The congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of §7 of the Norris-LaGuardia Act. 353 U.S. at 457-8.¹⁹"

¹⁹In holding §7 procedural requirements to be "inapposite" to specific performance of a contract of arbitration, the Court cited with approval Judge Magruder's opinion in *Local 205, United Electrical Workers v. General Electric Co.*, 233 F.2d 85 (1st Cir. 1956); *aff'd on other grounds*, 353 U.S. 547 (1957), at page 92, where he said:

"We do not believe that Congress intended §7 in any case to be a snare and a delusion, holding out the possibility of jurisdiction but demanding for its exercise sworn allegations of inapposite facts."

We submit that congressional intention to permit the Federal District Courts to protect their subject-matter jurisdiction and orders from infringing state court action is equally clear as expressed in 28 U.S.C. §2283, and was properly exercised here for that purpose, and in order to effectuate respondent's self-help rights under the Railway Labor Act.

Petitioner argues that the procedural requirements of Section 7 were not met by the District Court below in his June 19, 1969 Order. Obviously it was "inapposite" for the District Court to find in this case that, "the public officers charged with the duty to protect [BLE's] property are unable or unwilling to furnish adequate protection", as required by Section 7(c) of Norris-LaGuardia, in order to act to protect its jurisdiction and orders. Similarly the other procedural requirements of Section 7 are simply *non-sequiturs* in the circumstances here involved.

Morover it is equally obvious here as in *Lincoln Mills* that a Federal injunction against the enforcement of a state court injunction which infringes the jurisdiction and nullifies the orders of a Federal Court was not "a part and parcel of the abuses against which the [Norris-LaGuardia] Act was aimed." 353 U.S. at 458. The legislative history of Norris-LaGuardia contains no reference to congressional concern with such a case. Petitioner has claimed for the first time in the Petition, however, that the District Court's injunction violates the literal provisions of Section 4(d) of Norris-LaGuardia, 29 U.S.C. §104(d).²⁰ If a spirit

²⁰29 U.S.C. §104(d)

"By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;"

of "mutilating narrowness," *United States v. Hutcheson*, 312 U.S. 219, 235 (1941) and total literalism is to be applied in construing this provision of Norris-LaGuardia, we have pointed out that petitioner is not " * * * aiding any person participating or interested in any labor dispute", but is rather itself seeking the enforcement of the state court injunction. In the Congressional debates the injunctive abuses which this provision was drafted to meet were explained by Congressman Garber: "Has not the employee the right to accept the aid of his friends in a suit at law?" 75 Cong. Rec. 5492 (1932).

To read the Norris-LaGuardia Act in the manner contended for by the petitioner is not required by even the most extreme application of literalism, and would be, we submit, both ahistorical and contrary to the emphasis, repeatedly expressed by this Court, on construing the Norris-LaGuardia Act in a manner that will protect the Act's expressly stated (Section 2, 29 U.S.C. §102) congressional policy. *United States v. Hutcheson*, 312 U.S. 219 (1941); *Order of Railroad Telegraphers v. Chicago & N.W. R. Co.*, 362 U.S. 330, 335-6 (1960).

An additional factor weighs against the applicability of Norris-LaGuardia in the circumstances of this case. The District Court's injunction, as pointed out by Petitioner was "in form" (Pet. Br. p. 24 fn. 1) one enjoining the ACL from enforcing the state court injunction. Such a Federal injunction is, in fact, intended to run against the state court whose injunctive order had infringed the plenary jurisdiction of the Federal Court assumed in the numerous cases arising out of the FEC dispute, and which nullified and interfered with enforcement of the Federal Court's orders. The state court clearly cannot be considered a

"person participating or interested in a labor dispute", 29 U.S.C. §113(b) under any view of the Norris-LaGuardia Act. Consequently, an injunction such as in the case at bar, which, except for matters of form, is intended to restrain the state court from proceeding, does not violate any prohibition of Norris-LaGuardia. The District Court upon its finding that a stay of the state proceeding was required in aid of its subject matter jurisdiction and to protect and effectuate its earlier orders was clearly entitled to accomplish this purpose, which is in no way related to the language or purposes of the Norris-LaGuardia Act, by the issuance of the June 19, 1969 Order.

Finally, the District Court's injunction acted to enforce respondent's self-help rights arising under the Railway Labor Act, for the protection of which this Court has frequently held the Norris-LaGuardia Act to be inapplicable. *E.g. Virginian Ry. Co. v. System Federation No. 40*, 300 U.S. 515 (1937); *Brhd. of R. Trainmen v. Howard*, 343 U.S. 768 (1952); *Brhd. of R. Trainmen v. Chicago R. & I.R. Co.*, 353 U.S. 30 (1957).

CONCLUSION

For the reasons stated the Order dated June 19, 1969 of the District Court of the Middle District of Florida, Jacksonville Division, should be affirmed.

Respectfully submitted,

ALLAN MILLEDGE

RICHARD L. HORN /
1300 Northeast Airlines Bldg.
150 S.-E. Second Avenue
Miami, Florida 33131

Attorneys for Respondents

FEB 13 1970

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1969

No. 477

ATLANTIC COAST LINE RAILROAD COMPANY,
Petitioner,

—v.—

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION
823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E.
EASON, individually and as an official of said Brotherhood;
J. D. SIMS, individually and as an official of said Brotherhood;
H. M. SAWYER, individually and as a member of said Brother-
hood; W. K. MORRIS, individually and as a member of said
Brotherhood; and G. W. RUTLAND, individually and as a mem-
ber of said Brotherhood,**

Respondents.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

REPLY BRIEF FOR PETITIONER

**DENNIS G. LYONS
1229 Nineteenth Street, N. W.
Washington, D. C. 20036**

**FRANK X. FRIEDMANN, JR.
DAVID M. FOSTER
1300 Florida Title Building
Jacksonville, Florida 32202**

Attorneys for Petitioner

February, 1970

Of Counsel:

**JOHN W. WELDON
JOHN B. CHANDLER, JR.
ROGERS, TOWERS, BAILEY, JONES & GAY
JOHN S. COX
COX & WEBB
Jacksonville, Florida**

**DOUGLAS G. ROBINSON
ARNOLD & PORTER
Washington, D. C.**

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REPLY BRIEF FOR PETITIONER

**I. THE DISTRICT COURT'S INJUNCTION HERE VIOLATED
SECTION 2283 OF THE JUDICIAL CODE**

While most of the arguments set forth in the respondents' brief have been anticipated in our opening brief, some discussion of certain points raised therein may be merited. Before doing so, we must recall, for the sake of clarity, that on the question whether the injunction passed here by

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the Federal District Court against the state court proceedings was permissible under Section 2283 of the Judicial Code, the respondents have a twofold burden. First, they must demonstrate that the case is one of a sort which comes within the statutory exceptions to Section 2283. Secondly, if they should demonstrate that, they must show the propriety of the injunction under that exception, that is, that as a matter of substantive law the District Court was correct in enjoining the state court proceedings. The latter point in turn depends on the correctness of the District Court's conclusion that under this Court's *Jacksonville Terminal* decision the Florida Circuit Court could not apply Florida law with respect to the secondary picketing involved here.—Of course, as we have just noted, the second question is only reached once it is determined that this sort of Federal preemption defense may be litigated in an injunction proceeding against an action in the state courts, rather than through the established procedure of exhaustion of state appellate remedies and review by this court. See our Opening Brief, pp. 24-32.

A. None of the Statutory Exceptions to Section 2283's Ban on Federal Court Injunctions against State Court Proceedings Is Present Here

1. While the respondents never precisely identify which exception from Section 2283 they are relying on and while they occasionally misquote the statutory language (see point 3, below), the exceptions apparently relied upon, perhaps jointly and severally, are those which permit injunctions against state court proceedings where "necessary in aid of its [the District Court's] jurisdiction" or "necessary . . . to protect or effectuate its [the District Court's] judgments." (Res. Br., p. 2) Most of the respondents' argument apparently turns on the contention that

the injunction here was necessary to protect orders entered by the Federal District Court. While in the lower courts, and in opposing certiorari, the respondents relied only upon the April 26, 1967 order of the District Court in the present case denying the ACL temporary injunctive relief against the picketing (A. 64-68), the respondents now mention for the first time a number of other federal court proceedings, the orders in which apparently require protection through the injunction against state court proceedings challenged here. These newly-cited proceedings are listed on page 22 of the Respondents' Brief.

While it may be conceded that all these newly-cited federal court proceedings involve the lengthy labor dispute on the FEC, the respondents identify no order ever entered in any of them which in any way requires protection against state court action by the injunction under review here. For example, the principal, and repeatedly cited new case is *United States v. Florida E. C. R. Co.*, M.D. Fla., No. 64-107-Civ-J, which at one point reached this Court under the name of *Brotherhood of Railway & S.S. Clerks v. Florida E. C. R. Co.*, 384 U.S. 238 (1966). See Res. Br. 4-5, 22, 28-30. In that case, the District Court, in proceedings to which the United States, the FEC and the rail unions are parties but the neutral carriers are not, is passing on the question whether certain alterations in the terms and conditions of employment on its line unilaterally imposed by the FEC are "reasonably necessary" in order to permit it to continue operations despite the strike.¹ See also

¹ The proceeding mentioned in the text is the matter which is denoted as cases (a) and (b) on page 22 of Respondents' Brief. The case denoted (c) amounts to an injunction order which was entered over seven years ago. *Florida East Coast R. Co. v. Jacksonville Terminal Co., et al.*, U.S.D.C., M.D. Fla., No. 63-16-Civ.J. That order requires the neutral carriers to maintain interchange with the FEC. It is hard to say how the state court injunction

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Mungin v. Florida E. C. R. Co., 416 F.2d 1169 (5th Cir. 1969).

What this proceeding has to do with the question whether state law can be applied with respect to the BLE's attempt to picket the Moncrief Yard—wholly-owned by the Seaboard Coast Line—in order to put pressure on the FEC, is left in a convenient state of obscurity by the respondents. The contention is apparently made that by reason of having *United States v. Florida E. C. R. Co.*, No. 64-107-Civ-J, *supra*, before it, Judges Scott and MacRae of the United States District Court for the Middle District of Florida have acquired considerable expertise in performing "railroad duties." Res. Br., pp. 5, 30. While it may be conceded that that court has acquired a great experience in railway labor law by reason of the pendency of that case, we had not previously heard it suggested that expertise creates an implied exception to the anti-injunction provisions of Section 2283 of the Judicial Code. Certainly Section 2283 does not permit the injunctive ouster of state courts from exercising jurisdiction simply on the assertion of greater competence on the part of the federal judiciary. As set forth in note 1, above, the other newly-cited proceedings likewise did not involve any order of which the injunction under review could be said to be a vindication.

interfered with that order; indeed, the two orders appear complementary. (Respondents complain, Res. Br., p. 7, n. 6, that they were not permitted to intervene in the proceedings just referred to. The fact that they delayed over two years before attempting to intervene was the reason for the courts' denial of intervention.)

The proceeding identified as (d), whose proper style is *Brotherhood of Locomotive Engineers et al. v. Florida East Coast R. Co. et al.*, U.S.D.C., M.D. Fla., No. 65-352-Civ.J., is a proceeding in which there has not been any active step taken by the parties since April, 1966. While the neutral carriers are parties defendant in the cases denoted as (c) and (d), they are not even parties in the so-called "Clerks" case discussed in the text.

Respondents never point to any specific order entered in any of these federal court proceedings, except the April 26, 1967, order in No. 67-335-Civ-J, the case at bar, which it is claimed that the injunction under review was designed to protect or effectuate. This was the only order relied upon by the District Court itself. We suggest that the late discovery of these additional proceedings as a justification for the District Court's injunction is no more than a red herring.

2. The respondents assert that the District Court's April 26, 1967, order amounted to a declaration of rights of the ACL—the neutral carrier—and the unions with respect to the secondary picketing at Moncrief Yard. The respondents do not appear to contend that the simple fact that the District Court denied the injunction which was sought under federal law against the picketing makes it offensive to the District Court's order that the state court later enjoined that picketing under state law. This is, of course, underscored by the respondents' own procedural conduct; it was not until after this Court's decision in the *Jacksonville Terminal* case, two years later, that steps were taken in the federal court to enjoin the state court's injunctive order. —This makes it clear that the basis on which the federal court injunction against the state court proceedings was sought was not that the state court injunction was somehow inconsistent with the federal court's denial of that injunction, but was in reality an attempt to adjudicate a preemption defense to the state court proceedings by way of an injunction against them.

We have developed in our Opening Brief (pp. 38-39) the fact that the clear basis for the District Court's April 26, 1967, order was the Norris-LaGuardia Act. The District

Judge in question was, after all, the same federal district judge who in 1966 had enjoined the picketing at the Jacksonville Terminal, only to have his action reversed by the Court of Appeals by reason of the Norris-LaGuardia Act. See *Brotherhood of Railroad Trainmen v. Atlantic Coast Line R. Co.*, 362 F.2d 649 (5th Cir. 1966), *aff'd by an equally divided Court*, 385 U.S. 20 (1966). During the course of the oral argument before the District Judge which led to the denial of the temporary injunction evidenced by the April 26, 1967 order, the following colloquy occurred:

"The Court: You are basing your case solely on the Norris-LaGuardia Act?

"Mr. Milledge [attorney for the BLE]: Right. I think at this point of the argument, since Norris-LaGuardia is clearly in point here." (A. 63)

The key conclusion of law of the April 26, 1967, order is Conclusion No. 6 (A. 67), which is simply an adaptation to the facts of the Moncrief Yard picketing of the "economic self-interest" rationale used by the Court of Appeals for the Fifth Circuit in the *Trainmen* case just mentioned in holding the Norris-LaGuardia Act applicable. See 362 F.2d, at 654-55. The subsidiary conclusions with respect to the FEC's and the brotherhood's rights of self-help as between themselves are simply part of the reasoning why the Norris-LaGuardia Act was held to be applicable. (See Pet. Br., pp. 38-39) And the single reference to Section 20 of the Clayton Act, as we have set forth in our Opening Brief, does not indicate whether the District Court was relying upon the paragraph of that Section which simply contains an anti-injunction provision or the paragraph which states that certain acts may not "be considered or held to be vio-

lations of any law of the United States." See Pet. Br., p. 39, n. 9. —In any event, nothing in that order purported to define the rights of the parties to relief under state law; in the final analysis, unless the order had done that, it is not possible to justify the subsequent injunction against state court proceedings as "necessary . . . to protect or effectuate" that order.

Moreover, that order could not amount to a declaration of the parties' rights under federal law, let alone state law, because it was an order made simply upon application for a preliminary or temporary injunction. See the authorities cited at page 40 of our Opening Brief.—Presumably on this point, the respondents cite at length the cases of *Looney v. Eastern Texas R. Co.*, 247 U.S. 214 (1918), and *Sperry Rand Corp. v. Rothlein*, 288 F.2d 245 (2d Cir. 1961). See Res. Br., pp. 38-40, 51-52. In both these cases, a federal district court had granted affirmative relief through an interlocutory order, in one case by way of injunction and in another case ordering discovery and establishing priorities of discovery. In each case, the losing party in the federal court took action in the state courts which tended to frustrate the relief which had been ordered by the federal court. Under those circumstances, the federal court's subsequent grant of an injunction against prosecution of the state court proceedings was "necessary . . . to protect or effectuate [the District Court's] judgments."²

² Thus, the *Looney* and *Sperry Rand* cases do not teach that a preliminary injunction or other interlocutory order is a determination of the merits, protected against relitigation in a state court by injunction notwithstanding Section 2283. What they teach is that an interlocutory order of a federal court is as much entitled to protection by injunction against interference from a state court as is a final order. But here the April 26, 1967, order denying an injunction under federal law was not interfered with by the grant of the state court injunction under state law.

Here, the case is not one of an interlocutory order or injunction interfered with by proceedings in the state courts. Even accepting the respondents' version, all that the April 26, 1967, order presents are various conclusions of law on the basis of which a preliminary injunction was denied. The findings and conclusions made in connection with the temporary injunction do not "determine the rights of the parties." See, e.g., *Sinclair Refining Co. v. Midland Oil Co.*, 55 F.2d 42, 45 (4th Cir. 1932). Accordingly, there is no federal court determination of the parties' rights which is entitled to protection against a state court redetermination. Of course, this point is simply additional to the point that if the federal court had determined any rights, it determined only rights under federal law, and not those under state law.

3. The respondents also seem to invoke the exception from Section 2283 that permits injunctions against state court proceedings where "necessary in aid of its [the District Court's] jurisdiction." On this point, the basic fallacy of the respondents is exemplified in the casual misparaphrase of the statute with which they commence their Summary of Argument, to the effect that: "This case turns upon the power of a Federal District Court to protect its plenary jurisdiction . . ." (Res. Br., p. 21) But the statute does not say anything about injunctions "protecting jurisdiction": Its exceptions are for injunctions "to protect or effectuate its [the District Court's] judgments" or "necessary in aid of its [the District Court's] jurisdiction." (Emphasis supplied) The distinction is more than a verbal one. The basic point of Section 2283 is that the fact that a federal court may have jurisdiction over a dispute does not authorize it to enjoin a state court from also exercising jurisdiction. In these cases, the bringing of a second action,

this Court has said, "does not tend to impair or defeat the jurisdiction of the court in which a prior action for the same cause is pending. Each court is free to proceed in its own way and in its own time, without reference to the proceedings in the other court." *Kline v. Burke Construction Co.*, 260 U.S. 226, 230 (1922).³

The respondents' position is not aided by their characterization of the jurisdiction of the federal court as "plenary." Whatever this means in more precise terms, the point of Section 2283 is that in the exercise of its plenary jurisdiction to pass on matters of federal law, the federal court is not entitled to enjoin the state courts in the exercise of their plenary jurisdiction. "Early in the history of our country a general rule was established that state and federal courts would not interfere with or try to restrain each other's proceedings. That rule has continued substantially unchanged to this time." *Donovan v. City of Dallas*, 377 U.S. 408, 412 (1964).⁴ "[W]here the judgment sought is

³ The argument made by respondents at Res. Br., p. 52, that Section 2283 is subject to an implicit exemption here to avoid a supposedly "unseemly" race for a final judgment is similarly beside the mark. For the cases construing the predecessors of Section 2283 make it plain that it is only when a final judgment occurs that one court is precluded from proceeding further with the matter, except to recognize the prior judgment of the court first reaching judgment. *Kline v. Burke Construction Co.*, *supra*, 260 U.S., at 230-31, and cases cited. Thus, that there will be an occasional race for a final judgment is part of the price paid for having two sets of courts of plenary jurisdiction; the basic approach of Section 2283 is that one court does not interfere with the other until a final judgment has been reached in one court. Moreover, since the federal court here was proceeding under federal law and the state court solely under state law, even a final judgment one way or the other from either court would not be conclusive on the other court as to whether a remedy was or was not available against the picketing under the federal law in federal court or under state law in the state court, as the case might be.

⁴ The court continued: "An exception has been made in cases where a court has custody of property, that is, proceedings *in rem*

strictly in personam, both the state court and the federal court, having concurrent jurisdiction, may proceed with the litigation at least until judgment is obtained in one of them which may be set up as res judicata for the other." *Princess Lida v. Thompson*, 305 U.S. 456, 466 (1939). See also *Red Rock Cola Co. v. Red Rock Bottlers, Inc.*, 195 F.2d 406 (5th Cir. 1952); *Jos. L. Muscarelle, Inc. v. Central Iron Mfg. Co.*, 328 F.2d 791 (3d Cir. 1964); *Hayes Industries, Inc. v. Caribbean Sales Associates, Inc.*, 387 F.2d 498, 501 (1st Cir. 1968); *Hyde Construction Co. v. Koehring Co.*, 388 F.2d 501 (10th Cir. 1968), cert. denied, 391 U.S. 905 (1968); *Southern California Petroleum Corp. v. Harper*, 273 F.2d 715 (5th Cir. 1960). Indeed, there are cases holding that Section 2283 bars an injunction even to enforce an exclusive jurisdiction of the federal court. See *Puget Sound Power & Light Co. v. Asia*, 2 F.2d 495, 491 (W.D. Wash. 1921), aff'd on other grounds, 277 Fed. 1 (9th Cir. 1922), cert. denied, 258 U.S. 619 (1922). Here—where it is clear even under the substantive authority, the *Jacksonville Terminal* case, relied upon by respondents, that the state court has jurisdiction—it would violate the long settled construction of the central purpose of Section 2283 to hold that the exception for injunctions "necessary in aid of jurisdiction" permitted an injunction against the prosecution of a suit in state court simply because it involved the same controversy as a suit in federal court.

Thus, even if the proceedings in the state court and the federal court had to do with a claim arising under the same substantive law, state or federal, there would have been no basis for the federal court here to have enjoined the state court proceedings. See *Southern R. Co. v. Painter*,

or quasi in rem. In such cases this Court has said that the state or federal court having custody of such property has exclusive jurisdiction to proceed." 377 U.S., at 412.

314 U.S. 155 (1941). The matter becomes even clearer when it is remembered that the state suit was pleaded solely under state law. This fact makes it more apparent that all the respondents are seeking to reach is the forbidden result of adjudicating a preemption defense to a state court proceeding by way of an injunction suit in a federal court.*

* The respondents frequently quarrel with the fact that their three attempts to remove the state court proceeding to federal court were greeted by remand orders entered by the Federal District Court; interestingly enough, by the same district judge who finally enjoined the state court proceedings. See Res. Br., pp. 17-19, p. 42, n. 14. It is claimed that these three remands were erroneous under *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557 (1968). *Avco* was a suit for specific enforcement of a no-strike clause in a collective bargaining agreement, under Section 301 of the Labor Management Relations Act. This Court had previously held that such clauses might not be enforced by injunction in federal court by reason of the Norris-LaGuardia Act, see *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195 (1962). This Court held in *Avco* that notwithstanding the Norris-LaGuardia Act's bar against an injunction under these circumstances, the case was one within the District Court's original jurisdiction and hence properly removable.

Here, the only relief sought in the state court was under state law. If state law could be applied here, the case was not removable. If it could not be applied, it would appear that the remedy of the defendant was dismissal of the action, not removal to federal court. In any event, the whole contention as to the applicability of *Avco* by respondents underscores their basic strategy to have the question of the federal preemption defense litigated through a proceeding in the federal court.

In an extraordinary contention, after several times reciting that the orders of remand entered by the District Court were not "directly" reviewable, Res. Br., pp. 17, 18, 19, 42, the respondents urge this Court at this time to pass upon the correctness of the order of remand "in the interests of sound judicial administration." Res. Br., p. 42, n. 14. The suggestion calls for a little more than the exercise of "sound judicial administration." The Judicial Code does not simply provide that orders of remand are "not directly reviewable" as respondents repeatedly assert; what the Code says is that orders of remand are "not reviewable by appeal or otherwise." 28 U.S.C. § 1447(d). Where exceptions have been made, they have been made statutorily. See *Georgia v. Rachel*, 384 U.S. 780 (1966) (civil rights cases).

4. What the respondents are really trying to do, with a thin procedural veneer, is to suggest that there is an additional exception to Section 2283 where a party desires to try out a federal preemption defense to state law proceedings through an injunction application in federal court. As we pointed out in our Opening Brief, pp. 28-29, the suggestion that there is an additional exception to Section 2283 where the state court is said to be "wholly without jurisdiction over the subject matter, having invaded a field preempted by Congress," was flatly rejected in the *Richman Brothers* case, *Amalgamated Clothing Workers v. Richman Brothers Co.*, 348 U.S. 511, 515 (1955). The respondents essay various distinctions to the *Richman Brothers* decision; the only ones not anticipated in our opening brief are the rather remarkable contentions beginning on page 48 of the respondent's brief. There it is suggested that an exception may be made from Section 2283 in this case, although not made in *Richman Brothers*, because while in the Labor Management Relations Act context of *Richman Brothers*, the state courts were totally without jurisdiction, in the present context it is admitted that they have jurisdiction but simply are said not to be entitled to apply state law.—To this argument we can only comment that if any distinction were drawn, we would think it would run the other way; that an implied exception to Section 2283 might be advisable—although this Court has rejected it—where the state court is without jurisdiction, although not where it admittedly has jurisdiction, but simply is said not to be entitled to apply state law.* We submit that the

* It is also suggested (Res. Br., p. 49) that this Court denied the injunction in *Richman Brothers* because there was a "penumbral region" in which the state court might have functioned, whereas there is alleged to be none here. The fact of the matter is, however, that this Court's opinion in *Richman Brothers* began with the acknowledgment by the author of the majority opinion

other courts of appeals, and the Fifth Circuit prior to this case, have been correct in uniformly following the teaching of this Court that Section 2283 prohibits enforcement of a federal labor law preemption defense, however meritorious, by injunction against state court proceedings. See the cases cited in Pet. Br., p. 30, n. 7.

Thus, all that the injunction here seeks to accomplish is the forbidden role of adjudicating a federal preemption defense through an injunction against state court proceedings. While as respondents point out this case is one of a number which have been produced by the extensive labor difficulties on the FEC, and while that dispute has been extensively litigated in the federal courts, it must be remembered that Section 2283 is not simply an expression of general congressional intent subject to modification in cases claimed to be deserving. As the Court put it in *Richman Brothers*:

"This is not a statute conveying a broad general policy for appropriate ad hoc application. Legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions." 348 U.S., at 515-16.

The proper course for respondents to have followed would have been to pursue their appellate remedies in the Florida courts. Eight months have now passed since the Florida Circuit Court indicated that it would, upon respondents' request, enter a final judgment which would remove any question as to appealability (Pet. Br., pp. 15, 32), but respondents have not yet lifted a finger to do so. One cannot assume that if the preemption defense were

that on the merits the state court's action was clearly preempted by the Labor Management Relations Act. 348 U.S., at 512, 514.

meritorious, the Florida appellate courts would not correct the Circuit Court. Only the other day the Florida Supreme Court reversed, and indeed chastised a lower Florida court for insufficient adherence to the preemption doctrine prevailing under the Labor Management Relations Act, pointedly ordering the lower "Florida courts [to] refrain from tweaking the federal nose by precipitously issuing injunctions. . . ." Local 223, *Sheetmetal Workers Int'l Ass'n v. Florida Heat & Power Co.*, 73 LRRM 2239, 2242, January 7, 1970.

B. Even If Section 2283 Permitted the District Court Here to Pass on the Preemption Defense of the BLE to the State Court Proceedings, That Defense Is Not Valid

To be sure, even if either generally or because of some peculiar circumstance existing here the validity of the preemption defense asserted by the BLE to the state court proceedings could be tried out through its application for an injunction in Federal Court, in order to sustain that injunction the respondents would have to demonstrate the validity of that preemption defense. Their reliance is on *Brotherhood of Railway Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969), which we extensively discussed and distinguished in our Opening Brief, pp. 42-52.

As they did below, the respondents seize upon certain general language at the close of the Court's opinion in the *Jacksonville Terminal* case (Res. Br., pp. 33-34), ignoring the various unique factors involved at the jointly-owned Jacksonville Terminal, such as the unusual joint venture agreement, the provision of numerous services by the Terminal Company to the FEC, the fact that numerous FEC employees reported to work on the premises, the mixed use in fact of the purportedly separate entrances

for employees of the different carriers, and numerous other factors not present here, which we must assume were incident to the Court's holding in that case. See 394 U.S., at 372-74; 389-90, Pet. Br., pp. 44-45. We assume that if these had no relevance, they would not have been discussed at length. Moreover, the extensive legal and factual analysis of the sort of picketing having secondary implications that is protected or prohibited, which was rendered in the circumstances of the facts presented in the case then at bar (394 U.S., at 387-90), would appear meaningless if a conclusion was being reached that state law was totally ousted with respect to all exercises of so-called "self-help" upon neutral third parties to a railway labor dispute, absent violence.

The respondents' position is that the *Jacksonville Terminal* case teaches that state laws are completely inapplicable regardless of how "secondary" the self-help conduct in question is, and how far removed the neutral carriers are from the dispute. Under respondents' reading of the *Jacksonville Terminal* case, the "hot car" treatment could be given to FEC-originated cars wherever they happen to move throughout the United States, in order to induce the connecting carriers to stop receiving cars from the FEC. In arguing before the state court, after the decision in the *Jacksonville Terminal* case, for the dissolution of the state court injunction, counsel for the respondents made no effort whatsoever to identify the picketing in the Moncrief Yard situation factually with that which went on in the *Jacksonville Terminal* case. Instead, the position was flatly and exclusively taken that all picketing, however unqualifiedly secondary, was free from injunction under *Jacksonville Terminal*, and that it was no longer a matter of "how far you can go or how far you can't go." Luckie 1969 Tr.,

p. 19. The argument was that there was no longer any question of "any rules or distinctions of what is primary or secondary" nor "any corpus or body of law, which is available to any employer who does business with the FEC to prevent the picketing to stop them from doing business with FEC." Luckie 1969 Tr., pp. 23-24; see generally, *id.*, pp. 2-29. The result of such a reading would be to turn national labor policy on its head and permit a more wide-spread escalation of labor disputes under the Railway Labor Act than under the Taft-Hartley Act despite the fact that the former statute generally is much more concerned with limiting the parties' economic weapons and confining the area of controversy in the light of the basic importance of the industry it deals with.

Understandably uncomfortable with the breadth of the proposition which it espouses, the BLE repeatedly seeks to understate the facts as to the picketing here, in an effort to make that picketing sound as much like the picketing in the *Jacksonville Terminal* case as possible. Thus, the BLE contends that it was not the "avowed purpose" of the picketing to close down the Moncrief Yard. But Sims, the BLE official in charge of the picketing, told the ACL's superintendent that "he was going to shut down the Coast Line Railroad and I could tell my [the ACL's superintendent's] management about it." (A. 31).

The respondents' presentation is rather vague as just what it was that the picketing was supposed to accomplish.¹

¹ There is also a rather extensive and perhaps confusing barrage of statistics presented by respondents in an effort to magnify the amount of FEC interchange going on inside the Moncrief Yard. (Res. Br., pp. 9-10) The record is undisputed, however, that approximately 80,000 cars are handled in and out of the Yard each month, of which only 12,000 are destined for, or originated on, the FEC. Thus the interchange traffic amounts to only 15% of the cars handled in the Yard. Luckie Tr., pp. 67-70.

"Hot-car" conduct which evidently is now regrettable in terms of litigation strategy is attributed to "over-zealousness or misunderstanding on the part of individual . . . employees." Res. Br., p. 13. The respondents seek to give the impression that the central plan of the picketing was to stop interchanges with the FEC while creating no other effect on the ACL's operations.

The message of the picket signs was: "Do not handle FEC freight." (A. 92) There was nothing said in the signs that FEC freight might be handled where it was part of a string of cars with non-FEC freight. The action of the employees in not handling cars originated on or destined for the FEC wherever found seems an appropriate response to the sign, and hardly the consequence of over-zealousness or misunderstanding. There was ample evidence in the record that the refusals to handle cars which had originated on or were destined for the FEC were not restricted to those portions of the Yard where FEC interchange was effected, and that the employees did not follow any practice of classifying FEC freight except at the time when it was in a "solid block" ready for interchange or fresh from being interchanged. (A. 31, 34, 41, 43, 96, 97) The record is plain that the employees, once the picketing had begun, on numerous occasions declined to handle FEC-originated or destined cars at times *other* than when they were part of so-called "solid blocks." (A. 26-27, 29-30, 49-50, 94-99, 118-130) In some cases, on encountering FEC cars, employees simply walked off the job; this apparently gave recognition to the fact that there simply was no way of their performing their jobs at all on the "solid block" theory now advanced by respondents. (Luckie Tr., p. 72) Whatever the theory of the picketing in retrospect, in practice it amounted to "hot car" picketing.

We detail and provide extensive record references for the blockage of operations in the Yard which followed upon the commencement of the picketing. (Pet. Br., p. 11) It was also clear that by the time of the so-called "truce" the petitioner had depleted its normal working force, and that it would have been impossible to continue to try to run the Yard with supervisory help. (A. 98, 130) There had been a gradually increasing paralysis of the Yard's operations which was averted only by the "truce." Luckie Tr., p. 97.

The respondents admit that the picketing here does not meet the tests usually applied in the cases under the Labor Management Relations Act to determine permissible primary picketing of premises belonging to a neutral employer, namely; they admit that the picketing was neither restricted to the place where the interchange was effected nor to the times when the struck employees were on the premises. Res. Br., p. 32. The startling explanation for this is that this failure is excused if the neutral employer does not consent to a rearrangement of his business, including permitting the pickets to come onto his premises, in order to facilitate the picketing. Res. Br., pp. 11, 32. No authority whatsoever is cited for the extraordinary contention that a neutral employer must organize his business so as to facilitate picketing on a selective basis or face the consequences of unselective picketing. The parties who make this extraordinary suggestion do not seem even aware of the possibility that there might be problems, not the least of which would be physical safety, in permitting a group of pickets to come on foot into the midst of a busy railroad classification yard containing a great number of tracks in close proximity, to picket in an attempt to stop supposedly selected rail movements.

For the reasons stated in our Opening Brief (pp. 44-52), we submit that an intelligible line can be drawn, and indeed appears to be contemplated by the *Jacksonville Terminal* decision, between a holding that there can be no state court regulation of self-help weapons against the primary party to a railway labor dispute or at a joint terminal jointly owned by the struck party, but that the states are free to apply their general law of secondary picketing and boycotts against attempts to picket facilities wholly-owned by neutral carriers.²

Finally, if such a distinction does not commend itself to the court, we have suggested that the *Jacksonville Terminal* decision be reconsidered. The primary argument made by respondents in their brief as to why reconsideration would be inappropriate is the fact that to reconsider the decision would somehow be to "reward" the Florida Circuit Judge.³ (Res. Br., pp. 57-58) The suggestion is, ap-

² In seeking to explain why it is that they are picketing the Moncrief Yard, wholly-owned by one of the neutral carriers, rather than the jointly-owned Terminal facilities, respondents apparently are suggesting that if only the terminal was picketed, all interchange between the SCL and FEC would be moved and would be effected inside Moncrief Yard. But the fact of the matter is that all movements would have to cross the Terminal Company premises in any event, and be switched inside the terminal. See A. 33, 39, 124-25. Thus, the necessity for the escalation of the picketing against a yard wholly-owned by a non-struck carrier has hardly been shown, even if it were thought that necessity is a satisfactory enough reason for such an action. The respondents thus appear to have a self-help weapon available by a resumption of the picketing at Jacksonville Terminal. If for some reason intrinsic to their own strategic considerations, such as the number of paychecks that would be lost by closing down the operations of the entire terminal rather than those of a single neutral carrier, they do not desire to use that weapon, it hardly should be any concern to the courts.

³ We cannot leave unanswered the extensive assertions in the "Respondents' Brief (pp. 20, 35, 48) that the Florida Circuit Judge showed "recalcitrance" or, indeed, plain contempt for this Court. the colloquy quoted at page 35 of Respondents' Brief consists of

parently, that reconsideration is less appropriate where it would have the effect of affirming a lower court's decision (here, by reversing the injunction against it), than where it would reverse the lower court's judgment. We know of no rational basis for such a distinction, and indeed, we would observe that in one of this Court's most celebrated reconsiderations of its prior precedents, it affirmed a district court which had anticipated its action. See *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), *affirming* 47 F. Supp. 251 (S.D.W. Va. 1942).⁴

II. THE DISTRICT COURT'S INJUNCTION HERE VIOLATED THE NORRIS-LAGUARDIA ACT

While paying their respects to the untenable proposition that the Norris-LaGuardia Act does not apply at all to

the trial court's cutting off argument by Mr. Friedmann, counsel for petitioner, after the oral argument had already covered 35 pages of transcript, and when Mr. Friedmann was apparently about to launch on a perhaps speculative discussion of the background factors which might have been behind this Court's decision in *Jacksonville Terminal*. Mr. Friedmann had just started to say: "I believe the history of the Court . . ." when the judge cut him off. It was quite clear that what the judge meant was that he did not want to hear counsel's characterization of the mental processes of the Court, but rather was interested in what the Court's opinion said. A few lines later, when counsel made the point that the respondents' position was that "by inactivity the Congress of the United States has totally excluded the application of state law in the area," the Court questioned: "Isn't that what this said?" (Luckie 1969 Tr., p. 35), apparently referring to the same language at the end of the *Jacksonville Terminal* opinion which the respondents have repeatedly cited. There was then a lengthy discussion of the other points in the opinion which indicate that this Court did not intend to go so far. The words used by the state court judge on their face do not indicate; and were not understood by counsel at the time of their delivery to mean, that the judge had a bad opinion of this Court.

⁴ Of course, here the Florida Circuit Court did not anticipate an overruling of *Jacksonville Terminal*, but simply deemed the present case distinguishable upon its facts.

injunctions against management,¹ (Res. Br., p. 59) the respondents appear to rely on somewhat narrower grounds for its alleged inapplicability here. The primary argument appears to be that the Act was not designed to restrict injunctions which interfere with legal proceedings arising out of a labor dispute. But the presence of Section 4(d) in the Norris-LaGuardia Act makes it plain that Federal injunctive interference with the ordinary course of legal proceedings in connection with labor disputes was one of the matters which Congress had in mind when it passed the Act. "The kinds of acts which had given rise to abuse of the power of enjoining are listed in Section 4." *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 458 (1957). While, of course, Section 7 of the Act applies to cases which Section 4 does not reach, Section 7 should be read, as *Lincoln Mills* indicates, in the light of the matters that Congress was concerned with set forth in Section 4.

Thus we submit that the Act was intended to be applicable to Federal injunctions which interfere with the ordinary course of legal proceedings in connection with labor disputes. The respondents seek to suggest that Section 7 is inapplicable here because the findings that must be made under it are "inapposite." (Res. Br., p. 61) The only finding which is so identified is the finding specified in Section 7(e) that "the public officers charged with the duty to

¹ Respondents suggest, evidently, that the clear references in the statute to acts which could only be committed by management, such as joining an employer organization, do not reflect the real intention of Congress, but these provisions were inserted solely to give the Act a veneer of impartiality. (Res. Br., p. 59, n. 18) We submit that a statute which on its face is neutral, which is designed to "regulate the jurisdiction of courts," not "to regulate the conduct of people engaged in labor disputes" (*Marine Cooks & Stewards v. Panama S.S. Co.*, 362 U.S. 365, 372 (1960)) and which was passed with a legislative history containing the plain expressions which we quoted at pages 62-63 of our Opening Brief, clearly is a "two-way street."

protect [the Union's] property are unable or unwilling to furnish adequate protection." Of course, this finding would rarely be apposite in the case of a union seeking redress against management, but a single "*non sequitur*" hardly supports the proposition that the Act is inapplicable to the injunction at issue. This case is not *Lincoln Mills*: the injunction at issue here is of the sort at which the Act was aimed; there are no other provisions of the Act indicating a congressional policy in favor of injunctions such as the one at issue (indeed, congressional policy disfavors injunctions by federal courts against state courts); an unduly literal reading of Section 7 is not necessary to bring this injunction within it. Cf. *Lincoln Mills, supra*, 353 U.S., at 458. Furthermore, the findings required by Section 7 in a number of cases "sensibly apply" to the grant of an injunction such as the instant one. Cf. *Local 205, United Electrical Workers v. General Electric Co.*, 233 F.2d 85, 92-93, (1st Cir. 1956), *aff'd*, 353 U.S. 547 (1957). We suggest, as seems implicit in Judge Magruder's opinion just cited, that the best approach is to require that those findings which are apposite to the subject matter be made. If inapposite findings need not be made, that is no reason for dispensing with the apposite ones. The respondents never explain why the required finding: "that complainant has no adequate remedy at law," such as, by an orderly appeal of the state court injunction, was not pertinent here. See Section 7(d) of the Act. Moreover, it would appear that Sections 7(b) and (c) also are applicable and should have been complied with. See Pet. Br., pp. 2a-3a.

Besides violating Section 7 of the Act, the injunction also violates the specifics of Section 4(d). The objection which

the respondents make that Section 4(d) speaks only of aiding others in the prosecution of a lawsuit is here met by the fact that the injunction does prohibit collective and concerted action in aid of the ACL's rights in state court. (A. 196). And while for purposes of Section 2283 the law is settled that the injunction here is viewed as equivalent to one against the state court, the form of the injunction here is against the petitioner and those abetting it. Petitioner has been held to be a person interested in the FEC-railway union labor dispute. The injunction is enforceable by citation of contempt against the petitioner. Accordingly, it is completely wide of the mark to contend, as respondents do for Norris-LaGuardia Act purposes, that the injunction is solely against the state court (Res. Br., pp. 62-63) and not against petitioner. The practicalities are that the injunction in fact restrains *both* the state court and petitioner. To the extent that it restrains petitioner, it violates the Norris-LaGuardia Act.

The final argument made by respondents on this point is wide of the mark. That argument is that since respondents are only, they contend, acting under their so-called self-help rights under the Railway Labor Act, they may bring injunctions to remove obstacles to the exercise of those rights, notwithstanding the Norris-LaGuardia Act. In support of this proposition the so-called "accommodation" cases are cited, *Brotherhood of Railroad Trainmen v. Chicago R. & I.R. Co.*, 353 U.S. 30 (1957), and the cases which it followed. But those cases only hold that specific duties and procedural requirements provided in the Railway Labor Act may be enforced by injunction notwithstanding the Norris-LaGuardia Act. The court there recognized an exception to the Norris-LaGuardia Act only where there

were "specific provisions of the Railway Labor Act" or where the purpose of the injunction was "to enforce compliance with the requirements" of that Act. See 353 U.S., at 42; see also *id.*, at 41. The so-called power to exercise "self-help," even if it is broad enough to cover the secondary self-help methods employed here, is just that; acting under the self-help power is not equivalent to a party's enforcing a statutory command against another through the processes of the court. Exceptions to the Norris-LaGuardia Act are supposed to be built of hardier stuff than this.

CONCLUSION

For the reasons stated in our opening brief and herein, the judgment of the Court of Appeals should be reversed, and the case remanded to the District Court with instructions to deny the respondents' motion for an injunction against the proceedings in the Florida Circuit Court.

Respectfully submitted,

DENNIS G. LYONS

1229 Nineteenth Street, N. W.
Washington, D. C. 20036

FRANK X. FRIEDMANN, JR.

DAVID M. FOSTER

1300 Florida Title Building
Jacksonville, Florida 32202

Attorneys for Petitioner

Of Counsel:

JOHN W. WELDON

JOHN B. CHANDLER, JR.

ROGERS, TOWERS, BAILEY, JONES & GAY

JOHN S. COX

COX & WEBB

Jacksonville, Florida

DOUGLAS G. ROBINSON

ARNOLD & PORTER

Washington, D. C.

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